



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, OLC, FFT

Introduction

In the first application the tenant seeks a repair order for a variety of items, an order that the landlord comply with the law or tenancy agreement by repairing the rental unit and a rent reduction of \$21,600.00 for the landlord's failure to maintain and repair the premises over the duration of this continuing tenancy.

Both parties attended the hearing. The landlord left the hearing after approximately ten minutes, leaving IJ to participate on her behalf. Neither the landlord or IJ made a request for an adjournment. The tenant, the landlord and then her representative IJ were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

By amendment the tenant applies a second time seeking a compliance order that the landlord issue a Notice to End Tenancy to the tenant(s) of another rental unit in this home. At hearing the tenant was informed that such an order is not made by an arbitrator. Rather, if he is being unreasonably disturbed by other tenants his obligation is to report it to the landlord who is then obliged to investigate and, if her investigation warrants, to take reasonable steps to eliminate or reduce the disturbance. In appropriate circumstances those steps may be an eviction notice. If the tenant is of the view that the landlord has failed in her duty, as described above, the tenant may apply for compensation for the landlord's breach of the covenant for quiet enjoyment. I would refer the parties to Residential Tenancy Policy Guideline 6, "Entitlement to Quiet Enjoyment" in that regard. In the meantime, the tenant's second application, for an order requiring the landlord to evict another tenant, is dismissed. I grant the tenant any leave he may require, to make the proper application.

As stated at hearing, the issue that has brought this dispute to an early hearing is the tenant's request for a repair order. I find that the other remedies he requests: a

compliance order and a rent reduction, are “unrelated issues” within Rule 2.3 of the Rules of Procedure and I dismiss them with leave to re-apply.

Issue(s) to be Decided

Do the circumstances of this case warrant an order that the landlord attend to specific repairs to the rental unit or rental property?

Background and Evidence

The rental unit is the three-bedroom upper portion of a house. The house contains a lower, one-bedroom suite that the landlord rents to others.

The tenancy started in December 2016. There is a written tenancy agreement. The current monthly rent is \$1800.00, due on the first of each month. The landlord holds a \$875.00 security deposit.

The tenant testifies that there are eleven items in need of repair or attention in the rental unit or on the property. The landlord’s representative IJ agrees to attend to seven of them. Evidence was given about each.

Analysis

Electrical Plugs, Two Exterior Lights and One Motion Sensor Light

The tenant says three electrical outlets in the rental unit, two exterior driveway lights and one exterior motion sensor light are not working. He states it is not simply a case of burnt out bulbs. IJ agrees to have them looked at and repaired. The parties disagree about how soon this and all other agreed to items should be done.

I ORDER AND DIRECT that the landlord attend to the repair of the three electrical outlets in the rental unit, the two exterior driveway lights and the exterior motion sensor light by a qualified electrician within THREE WEEKS after being served with a copy of this decision.

Water Damage in Kitchen and Bathroom

The tenant testifies that as a result of a leaking roof, now repaired, a portion of the kitchen ceiling and bathroom ceiling were damaged. Photos filed by the tenant confirm

that the paint has peeled away at the two sizeable areas of the ceiling in each room. IJ for the landlord agrees to have the damage repaired.

I ORDER AND DIRECT that the landlord attend to the repair and painting of the water damage areas of ceiling in the kitchen and bathroom of the rental unit within THREE WEEKS after being served with a copy of this decision.

Bathroom Fan

The tenant's evidence shows minor water damage at the window area of the bathroom. The bathroom was not designed with a fan. The tenant indicates that the landlord said she would assess the situation and conduct repairs. At hearing IJ stated a fan was not needed, that the humidity should be controlled by opening the window.

I find that it has not been proved that, whether or not the landlord spoke of installing a fan during this tenancy, the landlord is legally obliged to install one and the tenant has not shown that the bathroom, originally designed and constructed without a fan, now requires one. Many homes of this age have no bathroom fans. He should leave the bathroom door open and/or crack a window open in the event of humidity build up.

Landscaping Front Yard

The tenant testifies that the landlord removed trees from the front yard but failed to pick up the detritus of branches and leaves. IJ agrees this should be done.

I ORDER AND DIRECT that the landlord attend to the collection and disposal of all leaves and twigs on the front yard parking area and gravel within SIX WEEKS after being served with a copy of this decision.

Peeling Paint in Bathroom

The tenant testifies that as a result of the humidity build up in the bathroom the paint at the window and toilet has peeled away. IJ agrees this repair should be done.

I ORDER AND DIRECT that the landlord attend to repairing and painting of the water damaged areas of bathroom window and area near the toilet of the rental unit within SIX WEEKS after being served with a copy of this decision.

Fireplace

The rental unit included a gas fireplace in the living room. The tenant testifies that it has not worked since move in. Though he turned it on once and heard hissing, there was no flame.

IJ for the landlord claims the tenant was told at the start of the tenancy that it would not work. It does not appear the tenant requested its repair or referred to it more than a couple of times during the almost four years of tenancy, although not all of the correspondence between the parties was referred to during this hearing.

The tenancy agreement is silent about the fireplace. I find that it was an accessory or fixture in the nature of a facility in the rental unit. It's existence in the rental unit at the time of move-in was a tacit warranty that it was included in the tenancy and was in working order. Had the landlord intended that it should have been excluded from the services and facilities included in the tenancy it was her responsibility to indicate it in the tenancy agreement.

I find the tenant is entitled to a working fireplace.

I ORDER AND DIRECT that the landlord attend to the servicing and repair of the gas fireplace by a qualified technician within SIX WEEKS after being served with a copy of this decision.

Deck and Railing

The tenant has exclusive use of a deck at the front of the home containing the rental unit. His photos and a video adduced by him show the decking to be failing in various areas, with significant holes through the vinyl covering and through the plywood below. The likely cause is wood rot. The metal railing running along the front of the deck appears to be in reasonable condition, however its attachment to the deck has deteriorated to such an extent that the railing can be whipped like a rope. Again, it would appear the likely cause is wood rot at the railing's attachment points. The railing is clearly unsafe as it is and likely the deck as well.

I ORDER AND DIRECT that the landlord retain the services of a qualified tradesman to attend to the repair or replacement of the deck and the securing of the railing in a safe manner within EIGHT WEEKS after being served with a copy of this decision.

Garage/Storage Shed Repair

The tenant testifies that at the start of the tenancy the landlord granted him exclusive use of a large shed where he could store his belongings. He has put his own lock on the shed door. The lower part of a wall at one corner of the shed has been damaged or deteriorated leaving a relatively open triangular area approximately three feet on the adjacent and two feet on the opposite. Some repair has been made, assumedly by the tenant, but the opening is sufficient to permit entry by bugs and small animals.

IJ denies that the tenant has any right to the shed though the landlord permits him to use it for storage.

The shed is not mentioned in the tenancy agreement as a facility the tenant may use. On that basis I find he has no particular right to use it though he has the landlord's permission.

The landlord is not obliged to conduct any repairs to maintain the shed. At hearing IJ stated the tenant may repair that corner of the shed if he wishes, at his own expense.

Conclusion

The landlord is ordered and directed to perform the work and repairs described above within the time limits stated.

I grant the tenant recovery of the \$100.00 filing fee for this application and I authorize him to reduce his next rent due by \$100.00 in full satisfaction of the fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 10, 2020

Residential Tenancy Branch