Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant to reduce rent by $500 per month for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by an agent ("**SP**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. I find that the tenant served with the required documents in accordance with the Act. The landlord did not submit any documentary evidence.

Preliminary Issue - SP's attendance

The hearing started at 1:30 pm. During the hearing, the parties discussed the possibility of settlement. SP needed to get instructions before agreeing to a partial settlement. I advised her that she could disconnect from the call to get those instructions and call back in and I would stand the hearing down. I asked her to call back within 10 minutes. She agreed she would. SP disconnected at 2:01 pm and did not reconnected within 10 minutes. I stood the hearing down for a further 9 minutes, but she did not call back. I confirmed that the teleconference was "unlocked" so that new callers could call in. At 2:20 pm, as I was unsure if SP was going to call back, I resumed the hearing, and the tenant gave testimony as to the extent of the damage to the rental unit. This testimony repeated what he had said earlier in the hearing, while SP was still on the call.

At 2:28 pm, SP reconnected to the call, with instructions for a partial settlement. I advised her that I recommenced the hearing at 2:20 pm and that the tenant had reiterated his testimony from earlier. She confirmed she understood.

Partial Settlement

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of the issues of repairs and of a rent reduction for future months' rent (but not the issue of a retroactive rent reduction or the issue of the filing fee):

1. The landlord will repair or replace the patio door, the door frame, and the surrounding insulation, and drywall. The landlord will make repairs to the residential property so that the conditions which caused the water damage to the rental unit have been remediated (the "**Repairs**").
2. The landlord will relocate the tenant to another rental unit located in the residential property until such time as the Repairs are complete. The tenant's monthly rent will remain unchanged.
3. After all the Repairs have been completed, the tenant will move back into the rental unit, and continue to pay the same amount of monthly rent.

These particulars comprise the full and final settlement of the issues of repairs and of a rent reduction for future months' rent. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final, and binding.

The balance of this decision will address the tenant's application for a retroactive rent reduction.

Issues to be Decided

Is the tenant entitled to:

1) a retroactive rent reduction of $500 per month; and
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is an apartment located on the top floor of a three-story residential property. The tenant and the landlord (which operated using a different name at the time) entered into a written, fixed term tenancy agreement starting September 1, 2009 and ending September 1, 2010. After the end of the fixed term, the tenancy converted to

a month-to-month tenancy, as per section 44(3) of the Act. In 2012, the landlord changed its name to its current name. The parties disputed the amount of monthly rent. The tenant stated it was 1,054, which includes $25 per month for parking. SP stated that monthly rent was $1,029, which includes parking. SP asserted that the tenant was double-counting the $25 for monthly rent. In any event, monthly rent is payable on the first of each month. The tenant paid the landlord a security deposit of $425, which the landlord continues to hold in trust for the tenant.

The tenant testified that the patio door, its door frame, and the exterior wall of the rental unit which separate the interior of the rental unit from the patio are in need of repair. He testified that this damage is caused by an underlying issue with the residential property which causes water to leak into the exterior wall. He speculated that it was a problem with the building's envelope. He testified that he first noticed water damage to the rental unit in 2015. Water was leaking down from his unit and was causing damage to the units below. He reported this to the landlord, and it remediated the water damage to the rental unit. It "took apart his balcony", "chipped away concrete" and installed eavestroughs to stop the water from flowing down to the units below.

This solved the problem with water leaking down to the units below the rental unit, but it did not fix the underlying problem. The tenant testified that every year or so the landlord would fix the drywall in the rental unit by mudding over it, sanding and repairing. The tenants testified that he does not have documentary evidence to support these assertions and is not seeking a rent reduction in connection with these events. Instead, for the reasons that follow, he seeks a retroactive rent reduction for the months of December 2018 to December 2021.

On December 28, 2018, the tenant filed an "internal maintenance" request with the landlord stating that there was a leak in the rental unit and that "the wall was wet". He attached a photo of the upper righthand corner of the patio door which showed water damage. He submitted a copy of this request into evidence.

On January 1, 2019, the tenant filed a "maintenance request" form (which was submitted into evidence) with the landlord on which he wrote:

> This has been ongoing problem that I have mentioned to several landlords [SP] included. Over the 8-9 years I have lived here. The solution was always mud over it and paint. The problem is a lot worse now and needs to be remedied as soon as possible. Mold has started growing in my living room period this is a building maintenance issue.

The tenant attached three photographs to this request showing water damage to the patio door as well as water damage to the door frame which the tenant testified caused "the door to bulge out".

SP testified that the landlord took this complaint seriously and investigated. She testified that the landlord installed gutters in an attempt to stop the flow of water down into the exterior wall “over a year ago” but that this has not stopped water to flow into the rental unit’s exterior wall. She testified that in October and November 2021 the landlord arranged for roofers to investigate the problem and come up with solutions to stop the continued flow of water into the exterior wall. Work has not yet been undertaken to repair the underlying issue.

The tenant testified that at some point in 2020 (he could not recall the exact date, beyond stating that occurred after the COVID-19 pandemic started), the landlord replaced the patio door and door frame. He testified that the contractors did not do an adequate job installing it, however. He testified that when they removed the door frame, they also removed the molding, but that they did not replace it.

As such, the tenant testified that there is a narrow gap between the sides of the door frame and the wall, which allows air and moisture into the rental unit. Additionally, the bottom of the patio door is not flush with the floor of the rental unit; one must step up over a small portion of the exterior wall when going through the door. The tenant testified that the contractors built a 2x4 frame to mount to the door frame on, and then only covered the exterior of it with cladding. They did not insulate inside this framing or cover the interior side with drywall or any other material. As such, this exterior cladding is the only barrier between the outside and the rental unit. This allows cold air and moisture into the rental unit. The tenant installed plastic sheets around the entire perimeter of the door, to cover the gaps and to try to keep the moisture and cold air out of the rental unit. He submitted photos of this into evidence.

In addition to the improper installation of the patio door, the tenant testified that water continues to leak into the exterior wall and doorframe. He submitted photos of the door and door frame taken recently which show a significant amount of water damage to the door frame. The portion of the door frame around the strike plate appears almost totally saturated with water. The top right corner of the door frame shows dark water damage extending a quarter of the way along the top of the frame and a quarter of the way down the side. The damage is extensive and surprising, given the age of the door.

The tenant testified that significant mold has grown in the drywall of the exterior wall around the door frame. He submitted photos of this mold growth. He testified that he is “allergic to mold”. He did not submit any documentary evidence supporting this assertion.

SP did not deny that the rental unit was in the condition that the tenant alleged. Rather, she testified that since the tenant reported the issue in December 2018, the landlord has worked to fix the problem. She did not make any submissions as to why the patio door was improperly installed.

SP also testified that the landlord offered to move the tenant to another rental unit located in the residential property at the same monthly rent. The tenant acknowledged that this was correct but testified that the landlord stated that once he made this move, he would not be permitted to move back to the rental unit once the repairs were made. He testified that the rental unit, being on the top floor, has vaulted ceilings and receives large amounts of natural light. The unit the landlord offered to him to move into was on a lower floor, had lower ceiling, and did not receive as much natural light. The tenant testified that he did not want to permanently give up the features of the rental unit which he loved, although he would have been prepared to do so on a temporary basis while the rental unit was repaired. SP agreed that the landlord's offer to relocate the tenant was, at the time, contingent on the move being permanent.

Analysis

The tenant's application for a retroactive rent reduction amounts to an application for compensation for damaged suffered due to the landlord's failure to repair or maintain the rental unit.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 of the Act states:

> **Landlord and tenant obligations to repair and maintain**
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> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the uncontroverted testimony of the tenant, which was supported by photographic evidence, I find that the rental unit is not currently in a condition that makes it suitable for occupation. There is extensive mold and water damage on the patio door, the patio door frame, and the interior side of the exterior wall. The patio door was improperly installed so as to allow air and moisture into the rental unit through gaps between the frame and the wall and due to an absence of insulation or interior drywall beneath the door frame.

I find that the rental units' condition can be broken up into two phases for the purposes of this application: before the new patio door was installed; and after it was installed. After the patio door was installed, I find the condition of the rental unit was markedly worse, as its improper installation allowed moisture and cold air into the rental unit.

The tenant could not provide me with an exact date the patio door was installed, beyond stating that it was sometime in 2020. SP did not dispute this. The tenant bears the onus to prove the facts alleged. He has not proven the exact date the patio door was installed, nor been able to provide me with a month or even a season this was done. I am satisfied, however, that the patio door was installed in the rental unit at some point in 2020. As he bears the onus, and as he has failed to discharge it with the necessarily level of precision, for the purposes of this application, I will set a date that is least advantageous to the tenant for the purposes of compensation: December 31, 2020.

Prior to this date, I find the water was seeping into the rental units' walls, which caused damage to the patio door, the patio door frame, and the drywall on the exterior wall. Based on the maintenance request given to the landlord by the tenant on January 1, 2019, I accept that this caused mold to grow in the drywall. The tenant did not submit any documentary evidence to support his assertion that he is allegoric to mold. Such evidence should have been relatively easy to provide (medical records or a doctor's note, for example). As such, I find he has failed to discharge his evidentiary burden on this point.

After this date, I find that, in addition to the water and mold damage, the improper installation of the new patio door allowed cold air and moisture into the rental unit.

I find that the presence of moisture in the walls, mold in the drywall, and cold air & moisture coming into the rental unit amount to the tenant's loss of quiet enjoyment of the rental unit, to which he is entitled pursuant to section 28 of the Act.

I find that by reporting the damage to the landlord and by installing the plastic barrier around the patio door frame, that the tenant acted reasonably to minimize his loss. I do not find it unreasonable for the tenant to refuse to move to a different unit in the building, given that the unit was of a less-desirable nature (lower ceilings and less sunlight) and as we would not have the opportunity to return to the rental unit with the features he bargained for when entering the tenancy agreement once the repairs were made.

Policy Guideline 6 address how a tenant may be compensated for the loss of quiet enojyment:

> **Compensation for Damage or Loss**
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> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the [Act] […]. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find that the tenant suffered loss as a result of the aforementioned damage. I find it appropriate to assess the loss suffered as a rough percentage of the tenant's rent. The tenant has applied for compensation equal to roughly 50% of his monthly rent. I find that this would far-exceed the amount of loss the tenant actually suffered as a result of the damage. The tenant had full use of all parts of the rental unit between December 28, 2018 and the present. He had a place to sleep, prepare his meals, store his belongings, and spend his time. As such, the predominate purpose of having the rental unit was maintained throughout the period in question. However, the quality of his use of the rental unit was diminished. In the circumstances, I find that a rent reduction of $100 per month (or roughly 10%) between January 1, 2018 (the first date rent was due after the tenant reported the damage to the landlord) and December 1, 2020 (the last date rent was due before the patio door was installed). is appropriate compensation for this reduction in quality of living as the result of the loss of quiet enjoyment of the rental unit caused by the damage to the rental unit.

I find that a rent reduction of $150 per month (or roughly 15%) from January 1, 2021 to December 1, 2021 is appropriate, to reflect the additional loss of quiet enjoyment caused by the improper installation of the patio door.

I order the landlord to pay the tenant $4,200, calculated as follows:

Description	Amount
January 1, 2019 to December 1, 2020 (24 months x $100)	$2,400.00
January 1, 2021 to December 1, 2021 (12 months x $150)	$1,800.00
Total	**$4,200.00**

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, he may recover the filing fee ($100) from the landlord.

As the tenancy will continue (with the tenant temporarily relocating to a new unit while the Repairs are made, per the partial settlement agreement), I order that the tenant may deduct these amounts from any rent due to the landlord in satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72(1) of the Act, I order that the landlord pay the tenant $4,300, representing the following:

Description	Amount
Compensation for loss of quiet enjoyment	$4,200.00
Filing Fee	$100.00
Total	**$4,300.00**

Pursuant to section 72(2)(a) of the Act, the tenant may deduct this amount from any further rent due to the landlord. Such deductions will not amount to the non-payment of rent.

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: December 22, 2021

Residential Tenancy Branch