



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding IMH POOL XIX LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP, OLC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order requiring the landlord to return their personal property, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and to recover the cost of the filing fee.

The tenant, the landlord's agent (landlord), and the landlord's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed. The parties confirmed receipt of the other's evidence. The parties were cautioned that they may not record the hearing.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant applied for an order requiring the landlord to return their personal property. Within this claim, the tenant wrote that they want *“reimbursement of amounts I paid after the Flood. My above statement and exhibits explains everything”*.

When asked about the claim to have their personal property returned, the tenant replied they wanted their personal property damaged from a flood to be returned to its original state.

I informed the tenant that this was not the claim they made, as the tenant has not alleged the landlord unlawfully seized their personal property. For this reason, I **dismiss** the tenant’s request for a return of their personal property.

Within the tenant’s evidence, there was a monetary request. I informed the tenant that they may not make a monetary claim through evidence, as the specific claim must be listed on their application as a monetary request.

The Act requires that the application must provide sufficient particulars of the claim.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. The respondent has the right to know the correct claim against them. I find the tenant may not seek to correct the deficiency through their evidence.

The hearing proceeded on the tenant’s request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

Issue(s) to be Decided

Is the tenant entitled to the order mentioned above and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement states the tenancy began on November 15, 2007, for a monthly rent of \$1,000, and a security deposit of \$500 being paid by the tenant.

The tenant described the claim in their application as follows:

to properly repair my Suite after a flood and reimburse me for my expenses while I had to be out of Suite.

The tenant said that there was a flood in their apartment on November 10, 2021, and they moved back into the unit on or about December 29, 2021.

The tenant submitted the following:

- Although the rental unit has been repaired, the rental unit is not in the same quality as before the flood.
- The lever in the bathtub does not close properly and the drain is blocked, causing the water to drain very slowly.
- Cement must have gotten into the drain due to the flood.
- The toilet does not flush properly.
- The landlord promised to replace the flooring and baseboards, but the previous laminate flooring was replaced with vinyl.
- The thinner flooring caused a gap between the flooring and the baseboards.
- The vinyl replacement flooring has now been replaced with a better flooring, but there is still a gap between the flooring and baseboard.
- The repairs have been shoddy and the rental unit is not up to the standard as before the flood.

The tenant's relevant evidence included emails between various parties relating to the repairs and photos.

In response, counsel submitted the following:

- The attached invoice from a plumbing company, dated January 14, 2023, shows that the toilet, bathtub and drain were cleaned and checked.
- A camera was put through the pipes and no obstruction was found.
- The vinyl replacement flooring was again replaced, with an underlay now placed between the floor and the flooring.
- The tenant picked out the flooring colour.
- The flooring is the same type the landlord uses whenever any suite is refreshed after a tenant vacates, by the same company.
- The flooring replacement is not of a lesser quality and is up to code.

- The gap between the flooring and baseboard has been filled in by the contractor with “quarter round”.

The landlord’s relevant evidence included extensive emails between the landlord and the contractors making the repairs, invoices from the repairs, and photos.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The onus to prove their case is on the person making the claim.

Section 32 of the Act, a landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, I find the evidence shows that the landlord dealt with the leak in the tenant’s ceiling quickly. There was extensive evidence showing the repairs and the progress of the repairs, as well as thorough communication with the tenant.

The tenant claimed the toilet and bathtub drain were not working properly. I find the landlord submitted sufficient evidence that they hired a plumber, who in turn cleaned the bathroom fixtures and ran a camera through the pipes, detecting no blockage.

I therefore **dismiss** the tenant’s request for repairs for the bathtub drain and toilet.

The only issue remaining is the tenant’s request for their rental unit to look as nice as it did before the flood and not to look shoddy.

I do not find this is a request for repairs. Through no fault of the landlord, a flood occurred in the rental unit. Therefore, extensive repairs were required. Not only did the landlord replace the original damaged flooring, the landlord then had that replacement flooring replaced due to the complaints and dissatisfaction of the tenant. The gap between the new flooring and the baseboard was filled by the landlord’s contractors. Having reviewed the photo, I find this remedy was reasonable and sufficient. I am not

sure what, if anything, the landlord could do to make the rental unit look exactly like it did before the flood.

I find the baseboard issue complained of by the tenant is a cosmetic issue and not a request for repairs under the Act.

As a result, I find the landlord fulfilled their obligation under the Act of maintaining the rental unit that complies with the health, safety, and housing standards required by law and having regard for the age, character, and location of the rental unit, making it suitable for occupation by a tenant.

For these reasons, I **dismiss without leave to reapply** the tenant's application for an order requiring the landlord to make repairs to the rental unit, which includes the request to recover the filing fee.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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: April 26, 2023

Residential Tenancy Branch