



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, RP, OLC, FFT

Introduction

On March 24, 2023, the Tenants made an Application for Dispute Resolution seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This matter was set down for a hearing on June 5, 2023, at 9:30 AM. This Application was then subsequently adjourned for reasons set forth in the Interim Decision dated June 5, 2023, and set down for a final, reconvened hearing on September 26, 2023, at 11:00 AM.

Both Tenants attended the final, reconvened hearing. Landlords M.B. and D.B. attended the hearing as well, with J.T. attending as counsel for the Landlords. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of J.T., provided a solemn affirmation.

Service of the Tenants' Notice of hearing package and the parties' evidence packages were discussed at the original hearing, and there were no issues surrounding service.

As such, I have accepted both parties' evidence packages and will consider them when rendering this Decision.

As noted in the Interim Decision, as the Tenants' repair requests had finally been rectified by the Landlords, this hearing primarily addressed the Tenants' request for a rent reduction.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

At the original hearing, the parties agreed that the tenancy started on December 1, 2013, that the rent was currently established at an amount of \$3,374.40 per month, and that it was due on the first day of each month. A security deposit of \$1,375.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

Tenant K.L. advised that they informed the Landlords in October 2021 that there were problems with the wall oven and the stove, and that in response, the Landlords replaced the oven in November 2021. However, this appliance was a smaller unit, and the door latch was broken, so it would not close properly and required duct tape to hold it shut. He stated that they confronted M.B. about this and she stated that this was a "final fix", although she later indicated to them on November 12, 2021, that they would be replacing the oven. He referenced the video submitted to support this position. He

testified that despite their numerous written requests to have these two appliances fixed, the oven was only replaced on April 16, 2023, after the Landlords received this dispute Application. He stated that a repair person attempted to complete repairs in October 2022, but the proper written notice to enter the rental unit was never provided by this person or the Landlords.

Regarding the stovetop, he testified that 1/3 of the stovetop burners stopped working in October 2021, and the Landlords were notified of this at that time as well. He stated that M.B. accused them of damaging the stove, and they did not hear anything from the Landlords until a letter requesting repair was sent to the Landlords in June 2022. He testified that the Landlords sent a repair person to fix the stove; however, after several hours, those efforts were so unsuccessful that it resulted in only two burners functioning. He submitted that a repair person attended again on July 17, 2022, and these efforts were again unsuccessful. After the Tenants served another letter to the Landlords requesting repairs on August 20, 2022, he stated that the Landlords conducted an inspection on August 26, 2022, but there was no further communication from the Landlords after this. He advised that the Landlords finally sent a repairperson to fix this issue on April 19, 2023, after the Landlords received this Application. He noted that the repairperson fixed this problem in 30 minutes and determined that it was caused by a misplaced ground wire that had the potential to electrocute someone.

They advised that they were seeking compensation in the amount of **\$3,000.00** for these issues, but they could not explain how this loss was valued, other than it was a percentage of their rent over one and a half years of these ongoing problems. Tenant K.S. referred to a letter submitted as documentary evidence noting the stress and anxiety these issues caused them.

J.T. advised that the Landlords made consistent and multiple efforts to repair issues in the rental unit, and that they were “generally attentive” to the Tenants’ requests. He referred to the text messages submitted and noted that they replaced the original oven in November 2021. He submitted that an electrician attended the rental unit in the summer of 2022, and fixed the stovetop.

Landlord M.B. advised that this electrician indicated that there was rust due to water overflowing, and that the stovetop was “working perfectly” after being repaired.

J.T. then advised that a contractor was hired for a third time to address the stove issue, and that the Landlords asked this person to contact the Tenants to coordinate the

repair. However, the Tenants determined that this electrician was not a suitable repairperson. He noted that a new oven was installed on or around April 16, 2023, and that the stovetop was repaired around that time as well. He stated the issues with the oven and stove persisted “due to faulty appliances”.

M.B. advised that the original oven was brand new at the start of the tenancy, but was replaced in October 2021 with a second-hand oven. She testified that the door to the replacement oven could not be fixed as the Tenants could not agree on a time. She stated that she inspected the rental unit in November 2021, and agreed to replace this oven. She submitted that she attended the rental unit sometime in November 2021 with a replacement oven, but after having problems interacting with the Tenants, she would fix this this next summer. She stated that the latch issue with the oven was “not a big deal for them”, that the Tenants were really just unhappy with the smaller size of the replacement oven, and that she agreed to replace it with an oven that was comparable in size to the original oven.

At the final, reconvened hearing, Landlord D.B. advised that there were issues with the original oven that he tried to fix, but this was not successful. Regarding the replacement oven, as he was not an expert, he consulted with a repairperson, and this person stated that the door was not broken, but it simply needed to be pushed in harder. Regardless, they agreed to replace this one as well. Regarding the stove, he testified that it was an old stove, and that as an engineer, he could read electrical schematics. He stated that he fixed the stove, but the issue re-occurred despite his purported qualifications. He was unsure of when this issue re-occurred. He submitted that the first repairperson could not fix the issue as the Tenants wanted the proper written notice for entry, and he acknowledged that they, as Landlords, did not take any responsibility in coordinating this repair or giving the proper written notice for entry to do so. He confirmed that a second repairperson eventually fixed this issue.

J.T. advised that it was his best guess that D.B. attempted to fix this stove issue in early 2022, and that the Landlords had the first repairperson attempt to address the stove issue on July 14, 2022.

K.S. reiterated that these issues started around November 2021, that the smaller replacement oven was defective when installed, as duct tape was required to secure the door closed, and that both the stove and oven issues were rectified in April 2023, after this dispute was filed. She also stated that the electrician who fixed the stove informed

her that the improper wiring could have led to an electric shock.

K.L. advised that M.B. informed them that they had a replacement oven; however, after an argument ensued, M.B. indicated that she would no longer be addressing this issue. He testified that D.B. tried to fix the stove in June or July 2022, but only two burners were working. He stated that the Landlords required them to coordinate with the contractor for a time to repair the stove, but a convenient time could not be agreed upon. He submitted that he sent a message to D.B. about this issue, but there was no response until these appliances were finally fixed in April 2023.

M.B. advised that according to their conversation captured in the Tenants' video evidence, the Tenants stated that they did not have time for the oven replacement and asked that it be replaced in the summer. She indicated that this was replaced prior to the summer.

J.T. advised that the Landlords made reasonable efforts and took considerable steps to fix these issues. He submitted that the oven and stove were both functional. As well, he stated that the Tenants did not provide a reasonable basis, or any metric, to support the value of their claim.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlords provide and maintain 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."

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies,

their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

In reviewing the consistent and undisputed evidence before me, there is no dispute that the oven replaced in November 2021 was defective, that there were ongoing issues with the stovetop not working, and that the Landlords were well aware of these issues. Despite this, it is uncontroverted that the Landlords only elected to rectify these issues with these appliances after the Tenants filed this Application. Given that there is no evidence before me that the problems with these appliances were due to the Tenants' negligence, and given that J.T. acknowledged that the issues with these appliances persisted because they were "faulty", I am satisfied that these problems were a responsibility for the Landlords to correct under Section 32 of the *Act*.

In my view, addressing a repair issue that is the responsibility of the Landlords is not a hard concept to grasp. Once informed of a problem, if it is determined that the Landlords are responsible for repairing a broken item, the Landlords should address it in a reasonable period of time. I do not find it acceptable to replace a broken oven with one that is already defective, or that the Tenants should be expected to live normally with a partially functioning stove for such an extended period of time. Given that the Landlords only corrected these issues after receiving the Tenants' Notice of Hearing package, and given their testimony during the hearing, it was quite evident that the Landlords were either attempting to address these matters as cheaply as possible, or were shirking their responsibilities as Landlords in managing this tenancy properly as they simply expected the Tenants to coordinate a repair instead of taking on this role themselves, which to reiterate again, is the Landlords' responsibility. As J.T. acknowledged that the Landlords were "generally attentive" to these issues, I find that this supports my finding that the Landlords exhibited little concern for managing this tenancy in a manner that was expected of them. Clearly, the Landlords were aware of these issues, but were neglectful in their responsibilities in managing this property effectively, in accordance with the *Act*.

Regarding the Tenants' claims for a rent reduction for these repair issues, I find it important to note that Policy Guideline # 5 outlines a person's duty to minimize loss as follows:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply

with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

When assessing the Tenants' claims for compensation, I note that these issues have been going on for a significant period of time and that the Tenants could have applied for Dispute Resolution had the Landlords not rectified these matters in a timely fashion. Given that the Tenants waited so long to do anything about them, by way of making this Application, I do not find that a claim for a loss over one and a half years to be reasonable. Regardless, as it is clearly evident that the Landlords were negligent in addressing these obvious deficiencies in a timely manner, I accept that the Tenants did suffer from a loss in value of the tenancy. However, as the Tenants did not mitigate this issue, and allowed it to continue longer than it needed to, I find it appropriate to award the Tenants a monetary award in the amount of **\$2,000.00** to remedy this matter.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee. As such, the Tenants are permitted to withhold this amount, plus the monetary award above, in the total amount of **\$2,100.00**, from a future month's rent.

Conclusion

Based on the above, the Tenants are entitled to withhold the amount of **\$2,100.00**, in satisfaction of this claim from a future month's 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: October 24, 2023

Residential Tenancy Branch