



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, ERP, PSF, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for a monetary Order for loss or damage, that the landlord complete emergency repairs and provide services and facilities required by law and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Matter

The tenant's Application for Dispute Resolution requested a monetary Order in the sum of \$1,100.00. The tenants testified that they would like their deposit returned so that they can move but acknowledged that they now understand that the deposit paid must be disbursed as required by the Act. Therefore, the tenants withdrew their request for compensation and the hearing proceeded in relation to the balance of their Application.

The tenants did not submit any evidence. The landlord submitted one evidence package that was not received by the Residential Tenancy Branch within the required five day time-frame; therefore that evidence was not considered. The parties were at liberty to provide oral testimony.

Issues to be Decided?

Must the landlord completed any emergency repairs?

Must the landlord provided services of facilities required by law?

Background and Evidence

This tenancy commenced on August 1, 2009; rent is \$1,400.00 per month for a house which has two kitchens. The landlord testified that the house has been rented as a single-family dwelling. The tenants stated that six people are residing in the rental unit.

The tenants testified that there are a number of deficiencies in the house that the landlord must address. The tenants testified that the following repairs are required:

- removal of mould within the walls of 3 rooms in the house;
- repair of kitchen floor tiles that are lifting and causing injury;
- repair of the wood deck off of the family room;
- clean-up of the attic space which appears to have been used as a drug grow-operation; and,
- inspection of electrical wiring and repairs required to ensure safety and the operation of kitchen appliances.

The tenants testified that they have repeatedly talked with the landlord about problems in the rental unit. The parties agreed that a move-out condition inspection was not completed at the start of this tenancy. The tenants stated that they have recently removed trim around some windows so that mould could be cleaned with bleach, but that it appears mould is growing in the insulation and drywall. The tenants stated they became aware of the mould some time in September and that the landlord has told them it is their responsibility to clean up the mould.

The tenants testified that there is exposed wiring in one of the bedrooms and the witness stated that the boiler has inadequate wiring that poses a safety risk. The tenants testified that there are two kitchens in the rental unit and that they did install a plug onto existing wiring in the lower kitchen and installed a stove. The tenants stated that they can not use a microwave and toaster at the same time in this kitchen as the breaker switches off. The tenants stated that when they moved in they noticed the kitchen floor was not in good shape but that after a short period of time they realized that approximately 70% of the ceramic tiles are lifting, which cause a hazard.

The tenants stated that they placed some plywood on the deck as one of the tenants had their foot go through the surface. The tenants stated that this exit is one of two from the back of the house; the second exit enters the garage.

The tenants stated that the attic has evidence that the house was used as a drug grow-operation as there are stems of plants present. The tenants stated that they believe the grow operation may have led to the mould problems and be related to the wiring problems in the house.

The tenants stated that there is a drain in the kitchen that is allowing gases to enter the kitchen area; however, they had not yet made any request to the landlord in relation to this problem.

The landlord testified that they only became aware of the mould when they were served notice of this hearing. The landlord stated that the tenants have caused the kitchen floor tiles to lift. The landlord testified that they did not know about the items in the attic and that the tenants have not talked to them about wiring problems. The landlord stated that the extra stove installed in the basement may have caused problems with the electrical supply.

The landlord stated that the deck is in good shape and that he does not want plywood on the surface as it is unsightly.

Analysis

During the hearing the tenants confirmed that they have not placed their concerns in writing to the landlord and they were unable to provide any detailed information as to when they have complained of the deficiencies they allege exist in the rental unit.

The landlord has denied that there are problems in the rental unit and stated that they were not aware of the presence of mould.

Section 32 of the Act provides:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

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(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

(Emphasis added)

I have no evidence before me of the state of the rental unit; only the testimony by the tenants. In order to determine the need for repairs that may be required to the rental unit the landlord must first complete a thorough inspection of the rental unit. The absence of any written complaints made to the landlord by the tenants leads me to consider this hearing the first opportunity the landlord has had to respond to the concerns detailed by the tenants.

I find that the landlord must arrange an inspection of the rental unit within one week of receipt of this decision. The inspection must be completed in the presence of at least one of the tenants and must include assessment by a professional who is licensed to assess wiring and mould. If mould is discovered to be present in the insulation and walls the landlord must take immediate steps to have this removed by a company specializing in mould removal, so as to minimize the risk of exposure to mould spores. The landlord must also inspect the deck and attic with the tenants so that the tenants may point out the deficiencies with the deck and any cleaning that may be required to the attic.

The tenants are at liberty to arrange their own inspection of the rental unit through the use of any available government resource who can make determinations in relation to safety of wiring and potential fire hazards. Any report obtained through a reliable source may be shared with the landlord in order to assist in the completion of repairs that are deemed a health and safety necessity.

If the landlord fails to ensure that proper inspection and any required repairs are completed the tenants are at liberty to make further application for dispute resolution.

Residential Tenancy Branch Fact Sheet "Resolving a Dispute on Your Own" suggests an appropriate process which parties can follow when attempting to resolve problems within a tenancy. It is suggested that verbal communication, combined with a written record of everything that takes place may assist in solving problems. A copy of this Fact Sheet has been enclosed with this decision for each party. I have also enclosed a copy of the Guide for Landlords and Tenants in British Columbia for each party.

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In the absence of any evidence of the required repairs or detailed submissions referencing complaints made to the landlord by the tenants, I have made no determination on the merit of the tenant's application and find that the tenant's are not entitled to filing fee costs.

Conclusion

Within one week of receipt of this decision the landlord is to arrange an inspection of the rental unit, in the presence of at least one of the tenants, by a professional who is licensed to examine wiring and assess for the presence of mould. Any deficiencies related to health, safety and housing standards must be repaired within a reasonable period of time. If mould is found in the walls and insulation, in order to avoid the spread of spores, the landlord must take immediate steps to have the mould removed by a service that specializes in mould removal.

The landlord must inspect the attic and deck with the tenants in order to ensure the safety of the tenants and to establish the need to repair and cleaning.

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 12, 2009.

Dispute Resolution Officer