

Decision

Dispute Codes: MNDC, OLC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, an order instructing the landlord to comply with the Act, regulation or tenancy agreement, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenants are entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from October 1, 2005 to September 30, 2006. Thereafter, tenancy continued on a month-to-month basis until July 31, 2009. Towards the end of tenancy, rent in the amount of \$1,192.55 was payable in advance on the first day of each month. A security deposit of \$575.00 was collected on August 12, 2005. A move-in condition inspection and report were completed on September 9, 2005.

A move-out condition inspection and report were completed on July 29, 2009, and following the end of tenancy, the landlord returned to the tenants their full security deposit plus interest.

The tenants are applying for compensation as a result of the condition of the unit. Specifically, information set out by the tenants in their application reads, in part, as follows:

For 2 years we had to endure and tolerate living with a bathroom (the only one in a family house) that had damp, peeling ceilings, dry rot in all over the vanity and it could not be used; and an uneven lino floor, that caused my child to trip on many occasions. We informed the landlord of this problem 2 years ago. After a 1 year wait, the landlord sent out maintenance. The [sic] painted over the peeling ceiling and the damp walls, nothing was done with the vanity. A few weeks after the damp on the walls reappeared and the peeling ceilings also reappeared. We further complained to the landlord and was [sic] ignored for a further year.

We feel it is fair and just to claim \$200.00 per month compensation that we had to tolerate living in this condition and waiting for 2 years for repairs that never came.

Evidence submitted by the parties includes, but is not limited to, exchanges of correspondence and three photographs the tenant states were taken inside the unit. A chronological overview of the evidentiary correspondence is as follows:

February 8, 2008: letter from the landlord in which the tenants are informed about painting scheduled to take place in the bathroom on February 11 & 12, 2008;

February 18, 2008: letter from the landlord in which the tenants are informed about “replacement of your bathroom vinyl” scheduled to take place on February 28, 2008.

July 28, 2009: letter from the tenants in which the tenants describe their dissatisfaction with the landlord’s response to their concerns about alleged

deficiencies in the unit, and their request for compensation. In their letter, the tenants state, in part, as follows:

Our bathroom has been and continues to be damp with peeling ceilings. The vanity is rotten and the entire room is in disrepair. We reported the condition of our bathroom over 2 years ago to the previous managers and nothing was done. When they left we reported it again to the present managers several times.

Your workers came last year to repair the bathroom they proceeded to paint the ceiling and walls (without addressing the underlying problem, which we have been told by one of your workers that the roof in fact has a problem and is causing the ceiling to continuously peel and become mouldy.) So of course the ceiling began peeling soon after it was painted. Your workers then proceeded to relay the lino badly, leaving lumps all over which our daughter has tripped on the many times.

We reported the disgusting condition again to your office and was told that you would only come in to fix the bathroom when we went on vacation. We had no plans on going on vacation over the next few years, so that meant your office had no intentions of coming to repair our bathroom.

August 7, 2009: letter from the landlord in which the landlord acknowledges receipt of the tenants' letter of July 28, 2009, and states, in part, as follows:

On February 11 and 12, 2008, we repainted your bathroom completely. Then on Thursday, February 28, 2008, we removed the toilet and vanity so that [the floor company] our contractor could replace the subfloor and vinyl, we then replaced the vanity and toilet.

On April 21, 2009 when the annual suite inspections were done [names deleted] (site and maintenance managers) did your suite and it was brought to our attention that the bathroom needed a full replacement.

[The site and maintenance managers] spoke to [tenant “HL”] about the bathroom, explaining that it would take 4 to 5 days to completely renovate the bathroom. Complete renovation to include the removal and replacement of all tiles, bathtub, tubs, toilet, vanity, sub-floor, vinyl and paint. It would have been an inconvenience but necessary considering the amount of work entailed in the renovation. [Tenant “HL”] indicated that this would not work as they did not want to be inconvenienced. [The site and maintenance managers] then made an alternate suggestion and asked if they were going to be taking holidays anytime soon as this would be a good time to schedule the work. [Tenant “HL”] said that he would talk to his wife and let us know when would be a convenient time for them to do the bathroom renovation. We did not receive any response.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution. However, these efforts did not lead to a mutually agreeable settlement of the dispute.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

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.

There is a scarcity of documented concerns by the tenants in relation to the condition of the bathroom. However, based on the documentary evidence and affirmed testimony of the parties, I find on a balance of probabilities that the tenants did a number of times orally address their concerns about the condition of the bathroom to the landlord.

Including painting, work undertaken in the bathroom in February 2008 was significant. Further work required which was identified by the landlord during the annual unit inspection in April 2009, was even more significant. The parties present differing perspectives on the reasons why bathroom deficiencies identified in April 2009 were not remedied prior to the end of tenancy in July 2009.

On a balance of probabilities, I find that the tenants were required to use a bathroom which was in need of significant repair for the 6 month period leading up to and including the month when work was undertaken in February 2008.

I further find that the tenants were required to use a bathroom which was in need of even more significant repair for the 6 month period leading up to and including the month when the annual inspection took place in April 2009, and thereafter for the 3 month period to the end of July 2009 when the tenancy concluded.

As for the monetary order, therefore, I find that the tenants have established a claim of \$1,310.00. The calculation of this entitlement is set out below.

September 2007 to February 2008: the 6 month period before and including the month (February) during which painting and other remedial work was undertaken in the bathroom. Approximately 180 days @ \$2.00 per day = \$360.00;

November 2008 to April 2009: the 6 month period before and including the month (April) during which the unit inspection identified the need for “complete renovation” of the bathroom.” Approximately 180 days @ \$3.00 per day = \$540.00

May to July 2009: the 3 month period remaining in the tenancy after the unit inspection (April), during which no remedial work was undertaken in the bathroom, even after the need for such work had been formally identified by the landlord. Approximately 90 days @ \$4.00 per day = \$360.00.

As the tenants have achieved some success in their application, I find they are entitled to recovery of the filing fee in the amount of \$50.00.

Conclusion

Following from the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of \$1,310.00. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 28, 2010

Dispute Resolution Officer