



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

ERP, RP

Introduction

This decision deals with issues pertaining to the landlords request for a review being granted on part of the decision issued on December 29, 2010. The landlord contested the repair Orders issued on that date and as such I will deal with these issues only during this hearing.

The landlords' agents and the male tenant appeared both parties submitted additional evidence which was taken into consideration during his hearing.

The parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to an Order for the landlord to make emergency repairs for health or safety reasons?
- Is the tenant entitled to an Order for repairs to the unit, site or property?

Background and Evidence

The landlords' agent presented evidence in the form of e-mail correspondence between herself and the tenants. The tenants also submitted e-mail correspondence between them and the landlords' agent.

The landlords' agent testifies that in the e-mail from the male tenant dated September 03, 2009 he refers to details pertaining to the move in inspection and highlights areas for the landlords' attention. In this e-mail the tenants have documented that the living room and family room windows are hazy but no action is necessary and it is for the landlords' information only. The landlords' agent states this did not seem to concern the tenants when they moved into the house and to her knowledge the windows have not become worse since their tenancy started. The landlords' agent also states the windows are not dangerous or a health hazard. The landlords' agent states the tenants did not raise this as a concern when they renewed their lease in June 2010.

The tenant testifies that the discolouration to these windows has become worse since they moved in and on sunny days they cannot see out of these windows due to the haze effect. The tenant agrees it is not a health or safety concern other than the fact that they cannot see their children when they are outside playing. The tenant states he did send another e-mail to the landlords agent concerning this problem in March, 2010 and stated that the window is more cloudy than ever and is tough to see out and unsightly. The tenant goes on to say the seal could be broken and ought to be replaced because it also results in energy loss.

The tenant testifies that the landlords' agents' response to this was "could the front window wait for repair". The tenant states they are paying rent on this property and expect the landlord to maintain it including the windows so it can be used for the purpose it was intended for and that is to be able to see out of it.

The landlords' agent testifies that she responded to the tenants concerns raised in his e-mail dated September 04, 2009 concerning the damaged fence. The landlords' agent states she asked the tenant if he knew a handyman who could repair the fence and she would pay for it. If not to let her know and she would try to find someone to make the necessary repairs. The landlords' agent states the tenant sent her an e-mail dated September 28, 2009 to inform her that the neighbours had stabilized the fence and it was all good.

The landlords agent states if the fence was still in an unsafe condition the tenants should have notified her when they renewed their lease. The landlords' agent states the landlord does not

want to spend a lot of money on the house as it is up for sale. The landlords' agent states when she last went to the house she did not look at the fence.

The tenant testifies that the fence was stabilized by his neighbour but has not been repaired the wood is rotten and the slates are hanging on by few nails. The tenant has provided photographic evidence of this. The tenant states they have young children and they have to keep them away from the fence. He states it was not mentioned at the lease renewal as the fence repair was not a condition when they renewed their lease. He states as he had already informed the landlord that repairs were required the landlord should have followed up to see the condition of the fence which still remains dangerous and in a state of disrepair.

The landlord testifies that regarding the tenants concerns about the electrical problems in the house. She states she sent the tenants an email asking them to find an electrician and have the work done. The landlord states that she then received an e-mail from the tenant notifying her that he was able to do the repairs himself. The landlord thought that was the end of the matter. However, she found at the previous hearing that there were still repairs required. The landlord contends that the tenants did not notify her that the repairs were still required to the electrical system.

The tenant states that he was able to make repairs to some of the damaged electrical sockets, light fixtures and switch and the landlord did reimburse him for these repairs. He states that four electrical sockets are on the same circuit and he thought he had also resolved this issue when he found a breaker had blown that connects to these sockets. However, he later found whenever his wife used her hairdryer in the bathroom all four sockets would blow again as it seemed to trip the breaker. The tenant states he did not inform the landlord of this until the last hearing as she has stopped replying to his e-mails and it was brought up regarding the general level of maintenance at the property.

The landlords' agent testifies that she acted promptly after receiving an e-mail from the tenant in which he requested a handyman come and unblock the gutters. The landlord testifies that the gutters were cleaned on September 13, 2010 and she has provided a receipt for this work. She states the roofing company who gave her a quote for the roof did not mention any broken or leaking gutters.

The tenant testifies that he sent the landlord another e-mail on September 12, 2010 that detailed the handyman's findings that one gutter was broken and another one was built without a downpipe. The tenant testifies that the leaking gutter is outside their bedroom window and when it rains the noise from the water dripping affects their sleep.

The tenant testifies that the roofer who eventually repaired the roof did note that the gutters required repair and told the tenant that he would write to the landlord and recommend this work be carried out. The tenant claims the landlord has not had the gutters repaired however he is not concerned about the downpipe as it does not affect them.

The landlords' agent testifies that she received a warranty and invoice from the roofer but did not receive a recommendation to have the gutters repaired. The landlords' agent states she no longer reads the tenants e-mails as she has been insulted by his inappropriate use of the word 'bullying'.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. When tenants rent a property from a landlord they are expected to notify the landlord in writing of any repairs they have noted to ensure the landlord is able to take appropriate action. Once notified a landlord should investigate the problem and make any necessary repairs. In this case I find both Parties must take some responsibility for not following through on their correspondence to ensure the other Party is fully informed of the issues in hand. This however, does not absolve the landlords from their responsibilities to maintain a rental property pursuant to section 32 and 33 of the *Act*. It is irrelevant whether or not the tenants made any of these issues a condition of renewing their lease with the landlord as the burden for maintaining a residential property lies with the landlord.

Therefore, with regard to the tenant's application for an Order for the landlord to repair the windows; I find that although the tenants originally documented that the windows were hazy but no action was necessary, they later notified the landlord that the windows had become worse and they believed the seals were broken. It is my decision that the landlord did not follow

through with the tenants' concerns and did not investigate the problems with the windows or affect any necessary repairs to alleviate the problems. Therefore, the tenants are entitled to an Order for the landlord to make any necessary repairs to the windows to ensure they can be used for their intended purpose.

With regard to the fence repairs; I find the landlord was notified of the damage to the fence at the start of the tenancy and failed to inspect the fence herself but rather relayed on the tenant to organize the repairs. I find from the tenants later e-mail that the information provided was ambiguous as to the condition of the fence at that time however the tenant did only state that the fence has been stabilized. From this I find it is the landlords' assumption that no repairs were required when in fact the fence continued to pose a hazard. As such the tenants are entitled to an Order for the landlord to make any necessary repairs to the fence to ensure it does not pose a hazard to the tenants.

With regard to the electrical sockets; a tenant is required to notify the landlord of any emergency repairs to the property pursuant to s. 33 of the *Act*. A tenant may only carry out emergency repairs pursuant to this section of the *Act*. I find the repairs to these sockets have not been carried out by either party but any electrical system failures may be determined to be an emergency repair. Therefore the tenants are entitled to an Order for the landlord to make an inspection and any necessary repairs. Both parties have agreed to work cooperatively together to arrange a mutually convenient time for an electrician to attend the house with the landlords' agent and both tenants present to inspect the electrical sockets and if necessary make any repairs.

With regard to the repairs to the gutters; the landlord was notified by the tenants that the gutters were blocked which would have caused them to leak. The landlord argues that she was not informed that they continued to leak after they were cleared or that they were broken. The tenant argues that had the landlord followed through with his concerns she would have been able to determine that the gutters were still leaking. In this instance I find the gutters continue to leak and the landlord is responsible to ensure repairs are carried out. Therefore, the tenants are entitled to an Order for the landlord to make any necessary repairs to the gutters.

Conclusion

I HEREBY ORDER the landlord to arrange an inspection and any necessary repairs to the electrical system with two weeks of receiving this Order and make effective repairs to the gutters, fence and windows of the property within two months of receiving this Order.

If the landlord does not comply with this Order within the new specified time frame then the tenants are at liberty to file an application for compensation.

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: February 03, 2011.

Residential Tenancy Branch