Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act or tenancy agreement, for an Order that the Landlord make repairs, for an Order reducing the Tenants' rent and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?
2. Are repairs necessary?
3. Are the Tenants entitled to a rent reduction?

Background and Evidence

This tenancy started on August 1, 2010. Rent is currently $825.00 per month payable in advance on the 1st day of the month which includes a washer and dryer, stove and dishwasher.

The Tenants claim that at the beginning of September 2010 they discovered that the (front loading) washing machine was not working. The Tenants said they reported this problem to the Landlord right away but he asked them to find out if it was still under warranty and then he asked them to look for parts in the hope they could fix it themselves. The Tenants said it was not until October 6, 2010 that a repair person finally repaired the washing machine. Consequently, the Tenants argued that the Landlord took an unreasonable amount of time to repair the washing machine and as a result they lost the use of it for a month.

The Landlord claimed that the Tenants didn't advise him that there was a problem with the washing machine until the first week of October 2010. The Landlord admitted that he spoke to the Tenants about whether the washing machine was under warranty or not but claimed that he was the one who took steps to determine if it was still under warranty. The Landlord said that once he found out it was no longer under warranty, he gave the repair person the Tenants' telephone number to arrange a time to make the repair. Consequently, the Landlord argued that he took steps to have the washing machine repaired in a reasonable period of time.

The Tenants also claim that they did not use a portable dishwasher in the rental unit until early October 2010 and at this time that they noticed that there was a problem with the sleeve that connected the dishwasher to the sink. The Tenants said they verbally advised the Landlord about this problem in early October 2010 and on a number of occasions thereafter but he kept making excuses about having difficulty locating parts or having other things to do. The Tenants said that to date the dishwasher has not been repaired. Consequently, the Tenants argued that they have lost the use of the dishwasher for approximately 6 months. The Landlord said the Tenants did not bring this problem to his attention until mid-December 2010 when he met with one of them (E.D.) to discuss a number of other repairs. The Landlord claimed that this Tenant told him that it was not a big deal and that he would look for the part and fix it himself. The Landlord also said he arranged to have this part ordered approximately a week ago.

The Tenants said that at the same time they reported problems with the dishwasher, they also advised the Landlord that the oven was not working. The Tenants said they told the Landlord that they wanted it fixed before they paid their November 2010 rent but he again made excuses about not being able to find parts and kept putting it off. The Tenants said they discussed this again with the Landlord in mid-December 2010 and admit that they told him that it was not urgent at that time because they would be away for a few days over Christmas. The Tenants said the oven was repaired only 2 days ago. The Tenants said the person who repaired the oven had to order a part that took only 1 day to arrive which contradicted the Landlord's information that it was difficult to find the part in question. Consequently, the Tenants argued that they were without the oven for approximately 6 months because the Landlord did not take reasonable steps to repair it.

The Landlord claimed that the first time he heard from the Tenants about a problem with the oven was in mid-December 2010. The Landlord said the Tenants told him it was not an urgent repair because they rarely used it however they called him again on February 19, 2011 upset that it had not yet been repaired. The Landlord said he ordered the part in question that day but it did not arrive for another 2 weeks. The Landlord said he tried to install the part himself during the first week of March 2011 but it did not work. The Landlord said he had to go out of the province for about a week but when he returned he made arrangements for a repair person to install the part he had purchased but it did not work and had to be re-ordered. Consequently, the Landlord argued that once he was made aware by the Tenants that they needed the oven, he took reasonable steps to have it repaired.

The Tenants also claimed that the first time they tried to use an electric heater in the bedroom in early December 2010, it did not work. The Tenants said they advised the Landlord about this problem in mid-December 2010 and he said he would get someone to have a look at it. The Tenants said a repair person came in January 2011 to repair the heater and advised them that he had found metal paper and hair clips and a number of screws in the heater that likely caused it to short out. The Tenants argued that many of these objects belonged to the previous tenant or were left over from the construction of the rental unit. The Tenants said the repair person told them that the heater was not

working properly because there was no insulation to prevent cold air from entering and this caused the heater to run constantly. The Tenants argued that they not only lost the use of this heater for a period of about a month but also incurred additional electricity expenses to operate it and another electric heater.

The Landlord said although the Tenant (E.D.) advised him that the Tenants would be away over the Christmas holidays, he tried to arrange to have the heater repaired right away. However the supplier (with whom it was under warranty) had no one available to look at the heater until the following month. The Landlord said he gave the repair person the Tenants' telephone number to arrange a time to make the repair and it was done in early January 2011. The Landlord argued that it was unreasonable for the Tenants to bring in another heater to heat the bedroom during this time because the rental unit was small in area (622 square feet) and therefore the heater in the living room should have been adequate to heat the entire suite. The Landlord also argued that there was no evidence that the replacement heater used by the Tenants used more electricity than the malfunctioning one would have.

The Tenants also claimed that there was a problem with power surges in the rental unit such that they could not plug small kitchen appliances into an outlet on the same wall as the stove without tripping the breaker. The Tenants claimed that as a result of these power surges, their electric kettle and toaster oven were damaged and they sought $100.00 to replace them. The Landlord argued that any power surges would have been within "reasonable limits" but in any event should not have been strong enough to blow heating elements in a toaster oven or kettle.

The Tenants also sought compensation of $150.00 for fuel expenses to travel to a Laundromat for one month, for the cost of additional mobile phone charges to arrange for oven repairs, for additional hydro expenses and for the inconvenience of accommodating the Landlord's realtor who gave them short notice of showings. The Tenants claimed that the Landlord did not advise them that the rental property was for sale until after they had moved in. The Tenants said they would not have rented the rental unit had they known it was for sale and decided to stay only because it would have been an inconvenience and additional expense to move. In any event, the Tenants claim the Landlord allowed his realtor to put a lock box on their door without their consent. The Tenants also claimed that the Landlord's realtor often gave them very short verbal notice when she was showing the rental unit and as a result, they often had to leave work to attend the rental unit in order to remove any valuables lying around, to clean up (at the Landlord's request) and to prevent their cat from escaping.

The Landlord admitted that he did not advise the Tenants that the property was for sale until after they had moved in but he argued that in order to compensate them for any inconvenience of dealing with showings by his realtor he reduced their rent by $50.00 per month. The Landlord admitted that he did not ask for the Tenants' permission to put a lock box on the rental unit door but argued that he was needed to do so to facilitate showings of the rental unit. The Landlord said that as soon as he learned from the Tenants that his realtor was not giving them proper notice for showings, he

contacted her and instructed her to do so. The Landlord argued that he should not be responsible for any additional telephone charges incurred by the Tenants because they relied on a mobile telephone instead of a land line.

Analysis

Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

Section 27(2) of the Act says (in part) that a landlord must not terminate or restrict a service or facility unless the Landlord reduces the tenant's rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. Section 1 of the Act defines a "service or facility" which includes appliances and laundry and heating services or facilities.

In this matter, the Tenants have the burden of proof and must show (on a balance of probabilities) that the Landlord breached his duty under s. 32 of the Act to repair the appliances in question and that as a result, they were without a service or facility (that was included in their rent) for an unreasonable period of time. This means that if the Tenants' evidence is contradicted by the Landlord, the Tenants will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

1. Washing Machine:

The Tenants said the Landlord did not return their initial call to him about the broken washing machine for approximately a week and then delayed making repairs in the hope that it could either be repaired under warranty or repaired by them or at their expense. The Tenants claimed that for all of these reasons they were without the use of a washing machine for approximately a month. The Landlord said the Tenants did not report to him that the washing machine was broken until the beginning of October 2010 and that it was repaired by October 6, 2010.

A Landlord cannot be held responsible for making repairs of which he is unaware. Given the contradictory evidence of the Parties as to when the Tenants notified the Landlord about the broken washing machine and in the absence of any corroborating evidence from the Tenants (who bear the onus of proof) to resolve the contradiction, I find that there is insufficient evidence to conclude that the Landlord knew the washing machine was broken at the beginning of September 2010 and delayed in repairing it for a month. Consequently, this part of the Tenants' claim is dismissed without leave to reapply.

2. Dishwasher:

The Tenants also claim that they advised the Landlord about a broken dishwasher at the beginning of October 2010, reminded him about it from time to time thereafter but to date he has failed to repair it. However, in their written submissions, the Tenants admitted that they believed it would be easier to fix the dishwasher themselves given the difficulties they encountered with the Landlord trying to get the washing machine fixed. The Landlord claimed that he was only advised about the dishwasher not working in his conversation with one of the Tenants in mid-December 2010 and at that time, the Tenant told him that it was not a big deal and that the Tenants would fix it themselves.

Consequently, I find that the Tenants probably did advise the Landlord that they were not relying on him to repair the dishwasher but instead would try to locate the replacement part themselves. In the circumstances, I find that there is insufficient evidence to conclude that the Landlord breached his duty to repair the dishwasher once it was reported to him. However, I find that once the Tenants filed their application in this matter, the Landlord was put on notice that the Tenants were no longer willing to make this repair and the Landlord acknowledged this when he claimed at the hearing that he had asked the supplier to order the broken part. As a result, I find that the Tenants are not entitled to compensation for a loss of use of the dishwasher. However, ***if the dishwasher is not repaired by April 30, 2011, then I order pursuant to s. 65(1) of the Act that the Tenants may deduct $50.00 per month from their rent commencing May 1, 2011 and continuing for each month or part month thereafter that the dishwasher remains unrepaired.***

3. Stove/Oven:

The Tenants claim that the advised the Landlord in early October 2010 that the oven was not working. The Tenants said the Landlord did not repair the oven until 2 days prior to the hearing and as a result, the Tenants sought compensation for the loss of use of the oven for a 6 month period.

The Landlord initially claimed in his oral evidence that the Tenants did not advise him about the oven not working until mid-December 2010 and at that time he said they told him that it was not urgent because they did not use it very often and they would be away over the Christmas holidays. However, the Landlord then claimed in his oral evidence, that he tried to order a part for the oven on October 20, 2010 but could not find one until February 19, 2011. The Landlord then later claimed in his oral evidence that he delayed ordering the part until February 19, 2011 because he didn't think it was urgent until he received a call from the Tenants that day who were upset that the oven had not yet been repaired and threatened to withhold their rent.

I find on a balance of probabilities that the Tenants reported to the Landlord in early October 2010 that the oven was not working. I find that the Landlord did not take any steps to repair the oven until February 19, 2011 at which time he ordered a part in the hope that he could repair it himself. The Landlord claimed that he had to wait 2 weeks for the part to arrive and then discovered that it was not working. The Landlord said he then decided to have the oven repaired professionally to prevent any further delay.

The evidence of both Parties was that it only took 1 day for the required part to be ordered by the supplier. As a result, I find that the repair to the oven could and should reasonably have been made by the end of October 2010 at the latest (or 2 – 3 weeks after it was reported). I also find that as a result of the Landlord's unreasonable delay, the Tenants lost the use of their oven for a further 5 month period. Consequently, I find that the Tenants are entitled to compensation of $100.00 for each month that they lost the use of this facility (after it should have been repaired) which was included in their rent for a total of $500.00.

4. Electric Heater:

The Tenants sought compensation for the loss of the use of a heater in the bedroom for a month. The Tenants admitted that they did not advise the Landlord about the need for this repair until mid-December 2010 and that it was repaired by early January 2011. The Tenants also claimed that they incurred additional expenses due to the increased consumption of electricity by having to use a replacement heater. The Landlord said he was unable to find someone to repair the heater until early January 2011 and that the Tenants told him it was not urgent because they would be away over the Christmas holidays.

I find that the heater was repaired within a reasonable time. I also find that there is no evidence that the Tenants incurred additional electricity expenses because they used a replacement heater for a month. As a result, I find that there is insufficient evidence to support this part of the Tenants' claim and it is dismissed without leave to reapply.

5. Kettle and Toaster Oven:

The Tenants claimed that due to a number of power surges in the rental unit, a toaster oven and kettle were damaged. The Landlord argued that it was unlikely that the heating elements of these appliances would be damaged by a power surge.

The Tenants provided no corroborating evidence that these appliances were damaged and no evidence to support the value of them. Consequently, I find that there is insufficient evidence to support this part of the Tenants' claim and it is dismissed without leave to reapply.

6. Miscellaneous Expenses:

The Tenants sought compensation for fuel expenses to do laundry at a Laundromat. However, for the reasons set out above, I find that there is insufficient evidence that the Tenants advised the Landlord that the washing machine was not working during the one month period alleged. Consequently, I find for the same reasons that the Tenants are not entitled to compensation for fuel expenses to do their laundry elsewhere.

The Tenants also sought compensation for increased electricity consumption due to the heater in the rental unit allegedly not functioning properly. However, the Tenants provided no evidence that the rental unit did not conform to building standards. Furthermore, the Tenants provided no evidence that this caused their electricity bills to increase. Consequently, I find that the Tenants are not entitled to compensation for increased electricity consumption due to an alleged defect with the heater.

The Tenants also sought compensation for increased mobile telephone expenses due to having to get warranty information about the washing machine on behalf of the Landlord and having to arrange to have it repaired. The Landlord argued that he should not be responsible for the Tenants' telephone expenses because they chose to rely on a mobile phone when the same local calls would have cost nothing on a land line. The Tenants provided no evidence (such as a telephone bill) to support their claim that their telephone expenses were higher for the reasons alleged. Furthermore, s. 7(2) of the Act says that a person who suffers damages must take reasonable steps to minimize their losses. I find that the Tenants reasonably could have avoided this expense had they used a land line. For all of these reasons, I find that the Tenants are not entitled to be compensated for telephone expenses.

The Tenants also sought compensation for having to travel back and forth to the rental unit on short notice to prepare for showings of the rental unit. The Tenants argued that the Landlord did not advise them that the property was for sale until after they had moved in. The Landlord argued that the Tenants were compensated with a rent reduction of $50.00 per month for any inconvenience realtor showings might have on them. I find that the Landlord did not advise the Tenants that the rental property was for sale until after they had moved in. Although the Tenants could have rescinded the tenancy agreement at that time, they chose instead to stay at a reduced rate of rent rather than to incur the expense and further inconvenience of moving again. Consequently, I find that the Tenants have been compensated for showings.

As a final matter, the Tenants claimed that they never agreed to have a lock box on the rental unit door, that the Landlord never asked for their consent to do so and that it is an unreasonable breach of their right to quiet enjoyment. The Landlord argued that he neeed to put a lock box on the door to assist realtors in showing the property.

However, the Tenants did not apply in this matter for a determination as to whether the Landlord is entitled to keep a lock box on the rental unit door and in the absence of such an application by the Tenants, I make no finding on that matter.

In summary, I find that the Tenants have made out a total claim of $500.00 for the loss of use of the oven in the rental unit for a prolonged period of time. I also find pursuant to s. 72(1) of the Act that the Tenants are entitled pursuant to s. 72(2) of the Act to recover from the Landlord the $50.00 filing fee for this proceeding. ***I order pursuant to s. 65(1) and s. 72(2) of the Act that the Tenants may deduct the amount of $550.00 from their next rent payment when it is due and payable.***

Conclusion

The Tenants' application is granted in part. 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 5, 2011.

Residential Tenancy Branch