



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, FF

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord make repairs, for a rent reduction in an amount equivalent to a reduction in the value of the tenancy due to the Landlord's failure to make repairs and to recover the filing fee for this proceeding.

The Tenant said the Landlord, T.H., is the owner of the corporate Landlord. The Tenant said he served both Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on July 18, 2011 to the residential address of T.H. The Tenant said this mail was returned to him unclaimed by the Landlords even though he advised T.H. on July 18, 2011 that he had sent the hearing package to him. Section 90(a) of the Act says that a document delivered by mail is deemed to be received 5 days later even if the recipient refuses to pick up that mail. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords' absence.

Issue(s) to be Decided

1. Are repairs necessary?
2. Is the Tenant entitled to a rent reduction?

Background and Evidence

This month-to-month tenancy started on November 1, 2003. Rent is \$641.00 per month which includes heat and hot water.

The Tenant said that in April of 2008 water began leaking through his bathroom ceiling from the upstairs suite. The Tenant said he verbally reported the leak to the former owner a number of times and again a year later in writing but nothing was done so he reported it to the municipal by-law enforcement authorities. In mid-January 2009, the former Landlord was ordered to make repairs to the plumbing and to the water damage caused to the Tenant's bathroom. The former Landlord failed to make all of the ordered repairs within the time limit set by the municipality. Consequently, in a dispute resolution hearing held on April 23, 2009, the former Landlord was ordered to complete the repairs by May 15, 2009. The former Landlord did not complete the repairs and the current Landlords purchased the rental property in June 2009.

The Tenant said that when the new Landlords purchased the rental property, he showed T.H. the bathroom in the rental unit. The Tenant said that at that time, the water damaged drywall had been removed but no finishing work had been completed. The Tenant also said that water again started to leak from the suite upstairs which he brought to the Landlords' agents attention on a number of occasions but nothing was done. Consequently, on June 1, 2010, the Tenant sent T.H. a letter advising him that water stains were re-appearing and that the work ordered by the Municipality and the director had not been completed. The Tenant said that by late-October 2010, water was again leaking through the drywall, mould was forming on the ceiling and paint and plaster were peeling from the walls. The Tenant said the Landlord, T.H., inspected the bathroom in November 2010 and agreed that it needed to be repaired immediately however nothing was done.

The Tenant sent the Landlord, T.H., letters dated April 28, 2011, June 7, 2011 and July 1, 2011 reminding him about the water damage to the bathroom and requesting repairs. The Tenant said that the Landlord, T.H., advised him on July 18, 2011 that he would start the repairs the following week however repairs did not commence until the beginning of August, 2011. The Tenant said he believes the leak from the suite has been addressed and the damaged sections of the drywall on the bathroom ceiling and walls have been replaced, however the roughly applied plaster needs to be sanded and the whole bathroom painted. The Tenant said the grouting along the bathtub also needs to be installed and a tile between the bathtub and toilet re-secured. The Tenant said he believes this tile lifted because the bathroom floor is rotting. The Tenant said the Landlord advised him that the floor will be replaced once renovations (which are currently underway in other suites in the rental property) are made.

The Tenant said the Landlord's failure to do repairs has resulted in his loss of use and enjoyment of the rental unit. In particular, the Tenant said he was so embarrassed by the poor state of repair of the bathroom that he would not invite guests over. The Tenant said he was also demoralized that he was having to endure walking in puddles of "grey water" that had leaked from the toilet of the suite above onto the bathroom floor and toilet.

Analysis

Section 32(1) of the Act says 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 having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

Section 33 of the Act defines an **emergency repair** as one that is "urgent, necessary for the health or safety of anyone of for the preservation or use of residential property and is made for the purpose of repairing major leaks in pipes or the roof" (among other things).

I find that repairs Ordered by the municipal by-law authority on January 12, 2009 and by the director on April 23, 2009 were not completed and that the Tenant brought this to the current Landlords' attention in June of 2009. I find that the repairs never were completed by the current Landlords and that the leak from the toilet of the suite above the rental unit reappeared by June 2010 which was again brought to the Landlords' attention by the Tenant. I further find that despite numerous verbal inquiries and three further letters to the Landlords dated April 28, 2011, June 7, 2011 and July 1, 2011 requesting repairs, nothing was done to address the water damage to the Tenant's bathroom until early August, 2011 after he applied for dispute resolution.

I also find that the water leak was an emergency repair that should have been addressed in June 2010 when the Tenant advised the Landlord of it in writing. While it appears the leak may have recently been resolved, I find that there remain repairs that have not yet been made. Consequently, ***I order the Landlords pursuant to s. 62(3) of the Act to finish the repairs by sanding the stucco on the walls and painting the bathroom of the rental unit. I also Order the Landlords to replace the grout around the base of the bathtub by the floor and to replace a floor tile between the toilet and the bathtub that has lifted. I further order the Landlords to complete these repairs no later than August 31, 2011.***

Section 65(1)(f) of the Act says that "if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement."

I find that the Landlords were aware as early as June 1, 2009 that repairs ordered by the municipal by-law authority on January 12, 2009 and by the director on April 23, 2009 had not been completed. I also find that the Landlords were aware by June 2010 that there was a continuing leak from the suite above the rental unit that was causing more water damage to the Tenant's bathroom. However, despite being aware of the seriousness of the water damage to the bathroom and the concern it was causing the Tenant, I find that the Landlords failed or refused to start any repairs until early-August 2011.

I accept the Tenant's evidence that he lost the use and enjoyment of the rental unit for a significant period of time due to his concern over "grey water" leaking into his bathroom from the toilet of the suite above him and that he was reluctant to invite guests to his residence due to the poor state of repair the bathroom. Consequently, I find pursuant to s. 65(1)(f) of the Act that the Tenant is entitled to a rent reduction of \$50.00 per month for the past 13 month period commencing July 1, 2011 (to and including July 2011). In particular, I find that the Tenant advised the Landlords in writing on June 1, 2010 that there was evidence of an ongoing leak which they should have investigated and repaired immediately. As a result, I find that the Tenant is entitled to compensation of \$650.00 as well as to recover from the Landlords the \$50.00 filing fee he paid for this proceeding.

I Order pursuant to s. 72(2) of the Act that the Tenant may deduct this monetary award from his rent and in particular, ***I order that the Tenant may withhold his rent payment of \$641.00 for September 2011 in full and may withhold \$59.00 from his rent payment for October 2011.***

If the Landlords fail to complete the repairs ordered in this Decision by August 31, 2011, the Tenant may re-apply for further compensation.

Conclusion

The Tenant's application is granted. 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: August 15, 2011.

Residential Tenancy Branch