



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes:

MNDC; OLC; RR; PSF; RR; FF

Introduction

This is the Tenants' application for compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations, or tenancy agreement; for an Order that the Landlord comply with the Act, regulations, or tenancy agreement; for an Order that the Landlord make repairs to the rental unit; for an Order that the Landlord provide service or facilities required by law; to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlords.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Tenant's advocate testified that the Tenants served the Landlords with the Notice of Hearing documents, by handing the documents to an agent of the Landlord on August 25, 2011, with a witness present. He testified that the Tenants served the Landlords with copies of their documentary evidence by registered mail, sent on September 13, 2011. The Tenants provided a copy of the registered mail receipt and tracking number in evidence.

The Landlord's agent MS testified that copies of the Landlords' documentary evidence were posted to the Tenants' door on September 19, 2011, at 9:10 p.m. The Tenants testified that they received the Landlord's documentary evidence on September 20, 2011.

The registered mail receipt indicates that the Notice of Hearing documents were served upon the corporate Landlord only and not on the Landlord AK. However, the Landlord AK's agent (by the same first and last name) signed into the conference and therefore I find that the Landlord AK was sufficiently served with the Notice of Hearing documents in accordance with the provisions of Section 71(2)(c) of the Act.

Documents served by registered mail are deemed to be received five days after mailing. Therefore, I find that the Landlords received copies of the Tenants' documentary

evidence on September 18, 2011. I find that the Landlords provided the Tenants with their rebuttal evidence quickly, and within three clear days of the Hearing. Therefore, both parties' documentary evidence was considered.

Issues to be Decided

Are the Tenants entitled to the monetary awards and Orders sought pursuant to the provisions of Sections 32, 62(3), 65(1), 67 and 72(1) of the Act?

Background and Evidence

The rental unit is a penthouse suite. This tenancy began on March 16, 2008. Monthly rent is \$1,500.00, including heat and hot water.

The Tenants and their advocate gave the following testimony and documentary evidence:

The Tenants testified that the Director has made Orders with respect to two prior applications and the Landlords have not complied with the Orders. The Tenants provided copies of the Decisions dated February 25, 2010 and July 20, 2010.

The Tenants testified that the tenancy agreement includes a washer, dryer and an in-suite laundry room. The Tenants seek compensation in the amount of \$900.00 because the Landlords removed the laundry room on June 28, 2011, without notice or compensation. The Tenants testified that the laundry room was approximately 108 square feet. The Tenants stated that the Landlord's agent bullied them into allowing the workers in to demolish the laundry room. The Tenants stated that they do not believe the laundry room had to be removed in order to fix the ongoing problems with the leaky roof. The Tenants testified that the Landlords have accessed the suite without due notice, and on other occasions the Landlords have given notice but have not shown up.

The Tenants testified that the laundry room also served as a storage area. The Tenants testified that the Landlord has not replaced the washer and dryer that were removed when the laundry room was demolished. The Tenants stated that they have to use coin operated Laundromats and "wash and fold" services which is costly and time consuming. The Tenants testified that they did not wish to use the common laundry facility in the building because there were bed bugs in the rental property and they were afraid of contamination.

The Tenants' witness testified that she lives in the building beside the Tenants' building, and that she has the same Landlords as the Tenants. She stated that both buildings

got a letter from the Landlords regarding bed bugs. She also testified that she has made requests for repairs, including electrical repairs, but that the Landlords have not made the required repairs. She stated that the Landlords make inspections but do not fix anything.

The Tenants seek compensation in the amount of \$300.00 for loss of use of 32 square feet of their kitchen since June 28, 2011. They testified that the items that were stored in the laundry room are now stored in the kitchen, resulting in less useable space. They state that when the laundry room was removed, they also lost natural light into the kitchen because two windows were also lost, along with a beautiful view. The Tenants testified that the Landlords were supposed to install a new washer and dryer in the kitchen, but have not done so.

The Tenants testified that the Landlords have not finished construction in the kitchen and that there are exposed wires and plumbing due to a large cutout in the wall. The Tenants testified that there is also a large hole in the ceiling and that the exterior of the building is visible through the hole in the wall. The Tenants seek compensation in the amount of \$150.00 for these defects.

The Tenants testified that their fridge door has not been closing properly for 9 months, which causes food to spoil. The Tenants stated that they have to tie the door shut with bungee cord. The Tenants stated that the Landlords were notified on December 2, 2010, about the faulty fridge door and again on December 15, 2010, during a routine inspection. The Tenants seek compensation in the amount of \$900.00 (\$100.00 per month) for this portion of their claim.

The Tenants' documentary evidence submits that there is black mould in the kitchen and bathroom; no fencing around a rooftop patio; no smoke detector in the unit; and that the fire escape is not safe. The Tenants provided a copy of a letter dated December 6, 2010, from the City Health Inspector indicating that there is severe mould growth in the Tenants' bathroom. The Tenants stated that they provided the Landlords with a copy of the letter but that the Landlords' remedy was to paint over the mould. The Tenants state that the mould has come back. The Tenants testified that they have persistent problems with chest and nasal congestion. The Tenants seek compensation in the amount of \$1,000.00 (\$100.00 per month) for the Landlords' alleged breach of Section 32 of the Act.

The Tenants testified that the Landlords do not always provide 24 hour written notice to enter the rental unit, even though the Act requires it and they have been ordered to do so by the Director. They stated that the Landlords' agents are constantly knocking at their door, leaving notices, and entering the rental unit to do repairs which are not

completed. The Tenants seek compensation in the amount of \$1,000.00 for loss of quiet enjoyment of the rental unit.

The Tenants also seek compensation for harassment in the amount of \$750.00. In their documentary evidence, they state that since the Tenants filed their applications in 2010, the Landlords have intimidated them; issued invalid 10 Day Notices for Unpaid Rent; called the Tenants after 11:00 p.m. at night; entered the rental unit without notice; and told the Tenants that the laundry room was going to be demolished rather than fix the roof as was ordered by the Director. The Tenants submit that the Landlords provided them with a list of Rules, including a rule that the Landlords could enter the rental unit at any time. The Tenants included a copy of the Rules in evidence.

The Tenant seeks compensation in the total amount of \$5,000.00, calculated as follows:

• Loss of laundry room for three months	\$900.00
• Loss of 32 sq ft of 125 sq ft kitchen space for three months	\$300.00
• Unrepaired wall and ceiling in kitchen for three months	\$150.00
• Unworking fridge for nine months	\$900.00
• Unhealthy living conditions/mould for 10 months	\$1,000.00
• Harassment by Landlords	\$750.00
• Loss of quiet enjoyment	<u>\$1,000.00</u>
TOTAL CLAIM FOR COMPENSATION	\$5,000.00

The Tenants seek a reduction in rent, for the following reasons and in the following amounts per month:

• Loss of laundry room	\$300.00
• Loss of storage space, windows, natural light and view	\$100.00
• Holes in kitchen wall and ceiling	\$50.00
• Poorly functioning fridge and resultant loss of food	\$100.00
• Mould in bathroom	\$200.00
• Patio boards not replaced and construction rubble on patio	<u>\$50.00</u>
TOTAL RENT REDUCTION REQUESTED PER MONTH	\$800.00

The Landlords gave the following testimony and documentary evidence:

The Landlords testified that the rental unit was 1,035 square feet before removal of the laundry room. The Landlord MS testified that there has been no spirit of cooperation or understanding on the Tenants' part and that this was hindering the Landlords from making repairs to the rental unit. The Landlord MS stated that there was no question that in early 2010 the Landlords were not attending to repairs, but that since July, 2010,

when the Landlord MS stepped in there has been progress. He stated that the Tenants are partners in any delays that have occurred because they have refused the Landlords access to the rental unit and shown no flexibility with respect to making repairs.

The Landlords submit that there was no leak found in the kitchen, only in the laundry room. They testified that the laundry room was an unapproved structure and the cause of leaks into other units below the Tenants.

The Landlords questioned the Tenants' witness with respect to bed bug notices. The Tenants' witness stated that she did not have first-hand knowledge that the Landlord had issued notices about bed bugs to the Tenants' building.

The Landlords stated that the laundry room was only 6 x 10 ft (60 feet), not 108 square feet as claimed by the Tenants. They testified that the resultant loss of square footage in the kitchen was only 16 square feet, not the 32 square feet claimed by the Tenants.

The Landlords agreed that there was a hole in the kitchen wall and ceiling since July 28 or 29, 2011.

The Landlords testified that there was mildew, but not mould in the Tenants' suite, and that mildew can occur for a number of reasons. They stated that there has been no professional mould inspection in the rental unit.

The allotted time for the Hearing ran out before the Landlords could complete their testimony. I explained to both of the parties that we would have to adjourn, but that I would make some interim orders with respect to the Landlords' access of the rental unit in order to affect repairs. The Landlords testified that the Tenants changed the locks on the rental unit and asked that the Tenants provide them a key. The Tenants denied changing the locks at the rental unit.

Interim Orders

Both parties agree that there are certain repairs required at the rental unit. I make the following Interim Orders:

The Tenants will provide the Landlords with another key to the rental unit forthwith.

The Landlords will have access to the rental unit between the hours of 9:00 a.m. and 4:00 p.m., September 28, 2011, and September 29, 2011, in order to:

- Repair the holes in the kitchen wall and ceiling.

- Have a professional inspect the refrigerator, report on its condition, and repair or replace it within one week, if necessary. The Landlords must provide a copy of the inspector's report to the Tenants as soon as it is ready, and to the Residential Tenancy Branch five clear days before the reconvened Hearing.
- Install the washer and dryer.

The Landlords will have a professional mould inspector inspect the Tenants' bathroom and report on findings with respect to the substance on the walls. The Landlords must provide a copy of the inspector's report to the Tenants as soon as it is ready, and to the Residential Tenancy Branch five clear days before the reconvened Hearing.

For the purposes of clarity, the Landlords are not required to provide the Tenants with 24 hours written notice of access for September 28 and 29, 2011. Both parties were advised of my Orders during the Hearing and that it would suffice as due notice to the Tenants. The Tenants are not required to be present while the Landlords are exercising this access.

This matter will reconvene at 1:30 p.m. on November 23, 2011. Copies of a Notice of Reconvened Hearing accompany this Decision, for both parties. The Tenants are not required to serve the Landlords with the Notice of Reconvened Hearing.

This interim 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: September 28, 2011.

Residential Tenancy Branch