



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ERP, RR

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested the landlord complete emergency repairs required for health and safety reasons, that the tenants be allowed to reduce rent owed for repairs not completed and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing I established that the tenants had submitted a 2nd application for dispute resolution. The Notice of Hearing package for that application was issued on July 10, 2012. The tenants had not yet retrieved the Notice of Hearing package from the Service BC office. A copy of the Notice was before me and indicated that the 2nd application would be heard on July 11, 2012, with the tenant's initial application that I was considering.

As the tenants had yet to serve the landlord with Notice of the Hearing scheduled in response to their 2nd application I determined that the tenants would be issued a new Notice of Hearing, which must be served to the landlord. The parties will then be at liberty to make evidence submissions and attend that future hearing.

The tenant explained that the witnesses would provide testimony supporting the tenant's submission that repairs were required. I accepted that the witnesses would corroborate the tenant's submissions and did not hear from them.

The landlord's photographs submitted as evidence were supplied via facsimile; the photographs were illegible.

Issue(s) to be Decided

Should the landlord be Ordered to make emergency repairs that are required for health or safety reasons?

Are the tenants entitled to compensation in the sum of \$700.00 to \$800.00 per month as a rent reduction for repairs and services agreed upon but not provided?

Background and Evidence

The tenancy commenced on September 15, 2010; rent in the sum of \$1,500.00 is due on the first day of each month. A deposit in the sum of \$500.00 was paid. A copy of the signed tenancy agreement was supplied as evidence.

The tenants rent a house that is approximately 60 years old.

The tenant submitted a number of black and white photographs taken of the rental unit in June, 2012; documenting a number of items that are in need of repair.

The tenants testified that since moving into the unit on November 2010, they have repeatedly brought deficiencies to the landlord's attention. The tenants have not issued any written repair requests to the landlord but stated they have repeatedly asked the landlord to make repairs. The tenants and landlord made the following submission in relation to repairs that are required to the unit:

Dishwasher

The dishwasher was repaired at the start of the tenancy; however, it began to leak again. The landlord told the tenants to place a towel under the dishwasher but did not arrange for repair. The tenants are now using their own dishwasher.

The landlord confirmed that he had repaired the dishwasher at the start of the tenancy and he believed the 2nd report of a leak was related to the original problem. The tenants did not discuss the problem with him and made no further requests for repair.

Electrical system

The tenants want the electrical system to be repaired. When the tenants use a toaster and coffee maker at the same time, the system is unable to handle the electrical load and breakers overload.

The landlord stated that the electrical system was inspected at the time he purchased the home in 2010; however the inspector was not an electrician. The landlord believes that the problem with the breakers is not unusual when multiple items are used on the same circuit.

Deck Railing

The tenants supplied photographs of the railing along the front entry porch. The photographs show signs of rot along the upper rail. The tenants were provided with screws, so that the porch panels could be reinforced. The tenants believe the railing is unsafe and should be replaced.

The landlord stated the railing was in the same condition at the start of the tenancy and that he does not believe it is unsafe. The landlord agreed that the rail is slightly unstable, but that it is not at risk of falling apart.

Fence

The photographs supplied by the tenants show fence posts that have degraded somewhat and 1 panel that has become dislodged from the panel fence. The tenants believe the fence poses a risk, as if one of their young children leaned on the fence it could fall over.

The landlord stated that is in fairly good condition and is not dangerous. The tenants never reported the fence to the landlord; however, with the landlord's permission, the tenants did repair a gate.

Kitchen Sink Tap

The tenants said that in November 2012, a plumber noticed that the top of the tap will come off. The tap works but the top of the handle falls off.

The landlord stated that the tap has never been raised as an issue and that the style of tap does allow the top to be lifted off.

Kitchen Window

The parties agreed that when the tenancy commenced the kitchen window was screwed closed. The tenants removed the screw so they could open the window; but it cannot be fully closed and locked. In 2012, the tenants spoke to the landlord about this problem.

The landlord stated he will investigate this problem.

Washing Machine Leak

The parties agreed that the washing machine has been repaired on several occasions; both as the result of clothing getting caught in the front-loading machine. The machine was last repaired 6 or 7 months ago. The tenant said the machine is leaking again.

The landlord stated that the machine had been repaired and he was not aware that it was leaking.

Exterior Doors

A side and back door cannot be unlocked from the outside of the home; only the front door may be used for access into the home. The tenants would like to have the locks repaired so that all doors may be used for entry.

The landlord testified this was not previously brought to his attention.

Roof Leak

The landlord confirmed that several months after the tenancy began there were several small leaks that occurred; one from the kitchen window and another at the front door. There was no dispute that the leaks progressed to the point where every room would leak when it rained.

The roof is a flat, tar style. On June 18, 2012, the landlord hired a neighbour who works for a roofing company and also does jobs independently. The landlord stated agreed that on June 23, 2012, there was a heavy rainfall which caused further leaking in one bedroom. As soon as the weather permits the landlord will have the repair to the roof completed.

The tenants have claimed rent reduction in the sum of \$700.00 or \$800.00 per month; throughout the tenancy, as compensation for the deficiencies in the home.

The landlord responded that every time he has been told of a problem he has made repairs within a reasonable period of time.

Analysis

The tenants have applied requesting emergency repairs be completed. Section 33 of the Act defines emergency repairs as:

33 (1) *In this section, "**emergency repairs**" means repairs that are*
(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

The tenants submit that the landlord has been aware of the need for repair since the tenancy commenced; the tenants have made multiple verbal requests for repair. The landlord stated he has not been asked to investigate many of the deficiencies brought forward by the tenants and that some items were previously repaired.

I have considered the matters raised by the tenants and find, pursuant to section 62(3) of the Act, that the landlord must address the following emergency repairs, no later than August 10, 2012:

- Investigate the locks on the side and back doors and ensure that they have working locks and that the tenants are provided with keys to those doors;
- Ensure the kitchen window can be fully closed and that a lock is installed; and
- Fully repair the leaks in the roof.

Once the emergency repairs have been fully completed I Order the landlord to provide the tenants with written confirmation that the work has been finalized.

I find that the balance of the items brought forward by the tenants were not within the realm of emergency repairs. Section 32 of the Act provides, in part:

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.

This is a 60 year old home that can be expected to have some deficiencies, due to the age and character of the residence. However; I find that the landlord must investigate the balance of the tenant's concerns as follows:

- Check the dishwasher for leaks and make any necessary repair, or, in the alternative, give the tenant's notice in the proper form to remove this service and provide an appropriate rent reduction;
- Replace the rotten railing on the front deck and ensure it is stable and secure;
- Repair the 1 fence panel that has dislodged;
- Check the kitchen sink tap to ensure it functions and does not come apart when in use; and
- Check the washing machine for a leak.

The landlord is Ordered to complete these inspections no later than August 10, 2012, and to make any required repairs within a reasonable period of time.

There was no evidence supplied by the tenants that the electrical system is posing a hazard or safety risk. In the absence of evidence of a safety risk, I decline to make any order in relation to the electrical system. The tenants should ensure that they use multiple outlets for appliances, vs. use of a single outlet.

There was no evidence before me that convinced me the front porch or fence posed a health or safety risk. The fence is older, and some deterioration shows at ground level and the top rail of the deck is in need of replacement, but the tenants have not shown on the balance of probabilities, that either pose any risk.

In relation to the claim for compensation, Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The tenants have claimed compensation for matters that have, by their account, existed since they moved into the unit in November, 2010. There was no evidence before me that the tenants took any steps to minimize the claim they are now making and I find that the tenants have allowed their claim to accumulate throughout the tenancy. Therefore, I find that the tenants have failed to mitigate the loss they are claiming and that the request for rent abatement is dismissed.

If the landlord fails to comply with my Orders the tenants are at liberty to submit a future application claiming any loss as a result of the landlord's failure to complete those repairs.

Conclusion

The landlord has been ordered to investigate deficiencies in the unit and to make specific repairs, as set out in my analysis.

The tenant's monetary claim is dismissed.

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: July 12, 2012.

Residential Tenancy Branch