



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP. RP, RR

Introduction

This hearing was convened by way of conference call in repose to the tenants application for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property; and an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*, and was handed in person to the landlord on August 09, 2012.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to an Order for the landlord to make emergency repairs?
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- Are the tenants entitled to reduce their rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testifies that this month to month tenancy started on September 29, 2011. Rent for this unit is \$850.00 per month and is due on the first day of each month in advance.

The tenant JC testifies that when they moved into the rental unit in this fourplex flat roof building the unit has suffered from a leaking roof which has caused water damage and leaking to the ceiling in the kitchen. This problem was identified during the move in inspection of the unit and the tenant testifies the landlord said he would get someone to come and repair the roof and the water damage but did not do anything until December, 2011 when someone came and patched a small hole in the roof. This stopped the leaking for about a week but water started to leak through again.

The tenant testifies that he would inform the landlord each month of the problems in the unit but finally got tired of asking the landlord to make repairs so the tenant drew up a written agreement dated July, 2012, for the landlord to make the following major repairs:

1. Kitchen roof
2. Downstairs bedroom window needs to be replaced due to a leak that has rotted the window frame
3. Upstairs bathroom needs a fan. The one in it has not worked since moving in
4. Deck in backyard made so rain can fall to ground and not run down wall where it has been leaking into the downstairs bedroom window

The tenant testifies that they both signed this agreement and it was witnessed and it was agreed that these repairs would be made by July 31, 2012. The tenant states to date the landlord has sent around a roofer to look at the roof on August 03, 2012 but no work has yet commenced and the landlord and roofer came back last Friday but did not go onto the roof. The kitchen ceiling is still suffering from water damage. There is also water running out of the light socket which is a safety hazard and prevents the tenants using the light in this room. The tenant testifies that the landlord has started to make

repairs to the deck but two railings and the stairs are still not completed. The window downstairs has not been repaired or replaced and no fan has been put in the bathroom.

The tenants KC testifies that there are also some minor repairs and other repairs which the landlord needs to look at before the winter months. There is a leaking tap in the bathroom upstairs; the light fixture in the downstairs bathroom has water leaking through it; there are two electric baseboards missing with the wires taped up on the landing and in the dining area; the sliding glass door only has one pane of glass and the second pane has obviously been broken in the past as there is still shards of glass stuck in the frame; there are other panes of glass missing from double paned units in the kitchen and living room.

The tenants seek an Order for the landlord to make all necessary repairs both emergency and non emergency. The tenants also seek to reduce their rent for repairs that have not been made as agreed.

Analysis

I have carefully considered all the evidence before me, including the undisputed sworn testimony of the tenants. I refer the parties to s. 32(1) of the *Residential Tenancy Act (Act)* which states:

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.

S. 32(5) of the *Act* states

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find from the evidence provided by the tenants, including photographs and a signed agreement by the landlord to make repairs to the unit, that the landlord would be aware of some of the tenants concerns regarding repairs in this rental unit. The landlord agreed to make repairs to the roof, the downstairs window, the bathroom fan and the deck by July 31, 2012 and has only made repairs to the deck by the time this hearing commenced.

I find therefore that the landlord is in breach of s. 32 of the *Act* and regardless of whether or not the tenants were aware of the condition of the unit when they entered into a tenancy the landlord must still fulfill his obligations under the *Act* to ensure the rental unit compiles with the health, safety and housing standards. I therefore **Order the landlord** to make all repairs to the rental unit as agreed on the signed agreement dated July, 2012 by September 15, 2012.

I also find the tenants have a list of other repairs required to the rental unit and although they have not yet put these repairs in writing to the landlord the landlord should be aware of some of these required repairs such as broken panes on some windows and missing baseboard heaters. I therefore **Order the landlord** to investigate and remedy any other repairs to the windows, baseboard heaters, leaking tap and leaking light socket by October 15, 2012.

With regard to the tenants application to reduce rent for repairs, I find the tenants are entitled to a rent reduction pursuant to s. 65(1)(f) of the *Act* which states:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Consequently, it is my decision that the value of the tenancy has been reduced and the tenants past rent can therefore be reduced at a rate of \$50.00 per month from October, 2011 to August, 2012 to a sum of **\$500.00**.

I further find the tenants are entitled to reduce their rent from September, 2012 to the sum of **\$100.00 per month** until such a time as the repairs on the written agreement are completed and the landlord has investigated and remedied the other repairs namely the two electric baseboard heaters, a leaking tap, a leaking light socket, and the broken windows in the kitchen, sliding door, and living room.

Conclusion

The tenants' application is upheld. I HEREBY ORDER the landlord to comply with S. 32 (1) of the *Act* and make the necessary repairs to the rental unit as documented above. If the landlord fails to comply with this Order the tenants are entitled to seek further remedy and compensation.

A copy of the tenants' decision will be accompanied by a Monetary Order for \$500.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I ORDER the tenants to reduce their rent by \$100.00 per week until such a time as the repairs agreed upon are completed and the landlord has investigated and made any further repairs as documented above.

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 23, 2012.

Residential Tenancy Branch