



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC,ERP, RP, RR

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant's have requested compensation for damage or loss under the Act, that the landlord be Ordered to make repairs and emergency repairs to the unit and that the tenants be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

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.

Preliminary Matters

On March 5, 2013 the tenants applied for dispute resolution. Within several days the tenants sent the landlord the hearing package via registered mail to a service address that had been included on a Residential Tenancy Branch (RTB) form that had been issued to the tenants by the landlord.

The landlord confirmed receipt of the hearing package within 4 or 5 days of March 5, 2013.

The application included a short hand-written note that outlined some repairs that the tenants wanted completed. A detailed calculation of the \$4,500.00 claim for damage or loss under the Act was not provided. The landlord did not know what the \$4,500.00 claim represented.

I then determined that the application claiming damage or loss would not proceed, based upon section 59(5)(a) of the Act which provides the authority decline an application when it does not comply with 59(2)(b) of the Act, by disclosing the full particulars of the claim.

The tenants did not provide a detailed calculation for any portion of this portion of the claim, as required. Therefore, the claim for damage or loss under the Act has been declined and the tenants have leave to reapply.

The tenants applied requesting rent abatement in the sum of \$200.00 per month.

The tenants submitted late evidence; that evidence was set aside as it was not given to the landlord or RTB at least 5 days prior to the hearing.

The landlord submitted late evidence which was also set aside; that evidence was also not served to the tenants.

Both parties were at liberty to make oral submissions.

Issue(s) to be Decided

Must the landlord be Ordered to make repairs and emergency repairs?

May the tenants reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenancy commenced on September 23, 2011; rent is \$1,500.00 per month, a deposit in the sum of \$750.00 was paid. The parties dispute the amount of utilities that may be payable by the tenants. The tenants rent a unit in the upper portion of a house; there are 2 other units in the lower level of the home.

A move-in condition inspection report was not completed.

The tenant's detailed list of items in dispute included:

- The absence of baseboards in the bathrooms and hallway;
- The wood-burning fireplace damper will not close allowing rain to fall down the chimney and onto the hearth;
- The unit needs painting;
- Squirrels are accessing the attic; and
- The front entry step tiles are broken and unsafe.

The tenant said that just prior to entering into the tenancy agreement with the landlord she was told that repairs would be completed; including replacement of the carpeting in the entry and on the stairs leading up and down from the entry.

There was no dispute that in April 2012 the tenants sent the landlord a letter outlining problems with the fireplace, the entry, baseboards and unfinished renovations that had been promised.

The tenant's witness said that she was present when the unit was viewed prior to the tenant's signing the tenancy agreement and that she heard the landlord say he was going to have the carpets replaced and the unit fully repaired. The witness said the front tile steps are broken; that she has fallen on the steps and that they are dangerous. The landlord declined to ask the witness any questions.

Last year the tenants were given notice by Canada Post that the postal worker refused to come onto the porch as the steps were not safe. The tenants moved the mailbox to the front of the house so that they could receive mail delivery. The tenant has tripped on the steps and wants the tile repaired as the steps are not safe.

The landlord agreed that at the start of the tenancy he had planned to install the remaining baseboards in the hallway and bathrooms and to prepare the stairway for painting. He had attended at the home on November 30, 2012 to complete these specific repairs but he had to spend his available time completing repairs to the washing machine and sink instead. As the landlord was forced to deal with these issues he did not have time to complete the baseboard and hall drywall repairs. If the other repairs had not been required the landlord would have been able to fix the planned items.

The landlord said that he would return to the unit by May 17, 2013 to install the baseboards and finish mudding the stairway walls.

The landlord was not aware of any problem with the fireplace but he believes the damper is seized. When he lived in the house moisture did not come down the chimney.

The landlord said that the tenants have not cleaned the front tile steps, which has made them hazardous. The landlord did not dispute that some tiles are broken and said they have been for years now. The landlord does not have any plans to repair the tiles.

The tenants expected the landlord to paint the unit at the beginning of the tenancy, as part of the renovations he said would be completed at the start of the tenancy. Some walls are not primed. The tenant painted 1 room as she is having a guest. The tenant guessed that the paint that is in the home is many years old.

The landlord said that the unit was painted approximately 5 years ago and that he has no plans to paint the unit.

There was no dispute that the landlord was aware squirrels are accessing the attic of the house. The landlord said that the squirrels usually leave during the summer months. When at the unit next the landlord agreed to enter the attic to ensure that there are no squirrels and that the access points used by the squirrels are blocked.

The tenant raised the issue of carpets as part of the renovations the landlord had promised. Carpets were not specifically referenced in the 1 page claim detail provided

as part of the tenant's application. The tenant said the entry and step carpet is stained with oil.

The landlord said that the entry carpets are approximately 7 years old and that they are dirty as the tenant has not cleaned the front steps, resulting in excess dirt being tracked into the house.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based on the testimony of the parties, I find, on the balance of probabilities, that there was a discussion that occurred prior to the start of the tenancy and that there was agreement, beyond that acknowledged by the landlord, that certain repairs would be made to the rental unit. The witness provided testimony that I found was consistent and unrehearsed; she mentioned items requiring repair that were not under dispute and those that were. This led to me find her testimony reliable.

The landlord has agreed to complete the installation of all baseboards in the bathrooms and hallway and to inspect the attic.

The landlord has agreed he will complete the mudding and sanding of the stairway area.

RTB policy suggests that carpets have a useful lifespan of 10 years and that a unit should be painted once every 4 years. There is no dispute that the unit has not been painted in the last 4 years, therefore, I find it is reasonable that it now be painted.

In relation to the carpet, I accept the tenant's submission that this was an item that was to be addressed at the start of the tenancy and that the landlord failed to replace the carpets, as agreed. Therefore, even though the landlord submits the carpets are 7 years old; I find, on the balance of probabilities that it was determined between the parties at the start of the tenancy that the carpets were stained and should be replaced.

The landlord stated he had a limited amount of time to complete repairs; that he had given the tenants 1 day when he would be at the home. However, the fact that other repairs were required should not then result in the agreed-upon repairs being left uncompleted. If tenants are shown to be negligent, then they can be found to be responsible for repairs; however, the landlord has a responsibility to make repairs, in accordance with section 32 of the Act.

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.

Therefore, pursuant to section 62(3) of the Act I Order the landlord to complete the following repairs to the rental unit no later than May 31, 2013:

- Inspection of the fireplace chimney for signs of water ingress and complete repair necessary to stop any leaks;
- Repair of the fireplace chimney damper so that it will fully close or another method of repair that allows the flue to be easily blocked when not in use and opened when in use;
- Paint the entire interior of the rental unit in a finishing coat;
- Repair or remove all tiles on the front entry that will render the steps free from the hazard of tripping;
- Install the bathroom and hallway baseboards;
- Ensure that the attic is no longer able to be accessed by squirrels;
- Repair the stairway walls in preparation for painting; and
- Replace the entry and stairway carpets.

The landlord must provide the tenants with written notice once all of these ordered repairs have been completed. If written notice of repair is not given to the tenants by May 31, 2013 I find, pursuant to section 65(f) of the Act that the tenants are at liberty to commence rent reduction, effective June 1, 2013, in the sum of \$200.00 per month. This rent reduction will continue until such time the landlord gives the tenants written notice that all ordered repairs are fully completed.

If there is a dispute in relation to the completion of all repairs the landlord may apply to terminate the rent reduction by providing evidence that the repairs have been completed.

If the tenants reduce the rent payable as they believe the repairs have not been completed as ordered and it is found that the repairs were sufficiently completed by May 31, 2013, any rent withheld by the tenants may be considered as unpaid rent.

In relation to the squirrel issue, I Order, pursuant to section 62(3) and 65(b) of the Act, that if the tenants discover there are squirrels in the attic after May 31, 2013, they may:

- Contact the landlord who will then have 7 days to have a professional pest control company attend at the unit to ensure the pests are removed and blocked from entry;
- If the landlord does not have a professional pest control company attend at the unit within 7 days of contact by the tenant the tenant is at liberty to hire a professional pest control company to have the pests removed and access points to the attic blocked;
- The cost of any professional pest control arranged by the tenant may not exceed \$600.00, and may be deducted from the next month's rent;
- The tenant must immediately provide the landlord with a copy of the professional pest control invoice and proof of payment, in support of her right to make the rent reduction; and
- If the pest control company attends as the result of the tenant's call and no pests are found to be entering the attic and all entry points to the attic have already been blocked the tenants will assume the cost of the service call.

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.*

As the tenants took no steps to seek a solution to the agreed-upon repairs until they submitted their application in March 2013, I find that they have failed to mitigate the claim made. Mitigation was explained during the hearing and the tenant was told that she cannot allow a claim to build over time, without taking steps to address the issues in a timely manner.

Therefore, the tenants have been given rent reduction only if the repairs that have now been ordered are not completed, as ordered.

There were no emergency repairs included in those sought by the tenant.

Conclusion

The landlord is to complete the repairs as Ordered, no later than May 31, 2013.

If repairs are not completed as Ordered, effective June 1, 2013 the tenants are entitled to rent reduction of \$200.00 per month.

The parties are to follow the instructions given in relation to Notice of repair completion and the potential rent reduction.

The tenants have leave to reapply on the balance of the monetary claim.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 03, 2013

Residential Tenancy Branch

