



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RR, FF

Introduction

This hearing dealt with an application by the tenants for orders compelling the landlord to pay compensation to the tenants for damage or loss; to comply with the Act, regulation or tenancy agreement; to make repairs to the rental unit; and to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Are the tenants entitled to a monetary order and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?
- Should the rent be reduced and, if so, in what amount?

Background and Evidence

Tenancy Agreement

This tenancy started February 15, 2012 as a one year fixed term tenancy. The rental unit is one suite in a three unit house. The landlord lives in another one of the suites. The monthly rent of \$2200.00 is due on the first day of the month. The tenants paid a security deposit of \$1100.00 and a pet damage deposit of \$1100.00. The agreement specified that the tenants would pay one third of the water, electricity and gas for the entire building.

Both parties are business people. The tenant has his own painting business. The landlord, who came to Canada several years ago, owns and rents three houses and two apartments. Although English is clearly her second language she was well-organized and alert in following the tenants' evidence and presenting her own.

There were some concerns during the first year of this tenancy. In the spring and summer of 2012 the tenants wrote to the landlord about the washing machine, the water leak in the second bedroom ceiling and some other repairs. Many of these were dealt with by the landlord.

The topic of the hydro bill was very contentious. The landlord asked the tenants to pay a larger portion of the hydro bill because the bills were higher than she had experienced with previous tenants. The tenants refused to pay any additional amount.

In spite of these issues the parties entered into a new one year fixed term tenancy agreement. The second term commenced February 15, 2013 and ends February 14, 2014. After the expiry of the term the tenancy can continue as a month-to-month tenancy. The monthly rent was increased to \$2300.00 but the tenants' share of the water, electricity and gas bills remained one third of the total for the house. Both parties testified that this was a negotiated agreement.

Washer and Dryer

The tenants never liked the washer and dryer that were provided with this unit. They were smaller than usual and slower. The tenants testified that some cycles on the washing machine would run for hours instead of minutes. The tenants thought the manner in which the machines operated contributed to the size of the hydro and water bills. The landlord expressed the view that the tenants' daily use of the machines was excessive and that it was the daily use that increased the hydro bill.

In the summer of 2013 the landlord went to China for an extended visit. Before leaving she gave the tenants her contact information and a long distance card.

On August 30 there was a flood at the rental unit. According to the tenants, the pump on the washing machine blew and the machine kept pumping and going through the rinse cycle. When the female tenant got home there was water everywhere. The male tenant came home from work. The tenants used a carpet shampooer and towels to clean up all the water. Because of their quick action there was no water damage nor did any mold develop.

The tenant sent the landlord an e-mail advising her of the flood and also advising her that the washing machine did not work. They also asked for instructions.

Subsequently, at 2:41 and 2:45 pm that day the female tenant sent the landlord two e-mails:

"Would it be ok to use your washing machine until you come back of the 4 of September?"

"I called Minata appliance today and they can't fix it. They told me to try Sears and I did. They can send anyone until September 9. That is just too long to go without washing clothes. The dryer works fine. Let me know."

The landlord responded by e-mail at 5:46 pm:

"I'll be in Vancouver airport on 11:50 am on September 4th, so probably will be home before 1:30 pm. You can use my washer when I return to home.

People usually use washer and dryer once a week so could you wait four days?"

The tenants testified that when they talked to Sears they were told that because of the age of the washer (seven years) it would be cheaper to buy a new machine than to fix the old one. They also testified about the importance of being able to do their laundry to them.

The tenants decided to buy a new washer and dryer. The date on the invoice was August 30, 6:02 pm. Delivery was arranged for September 4. The total cost of the new washer and dryer was \$1846.92 and the installation charge was \$84.00.

On August 31 the tenants advised the landlord by e-mail that:

"We end up buying our own machines. They get delivered on Wednesday. Where would you like them to put these machines that don't work. No I can't wait till you come back. . . We will talk more when you return. These machines you have are going to deep costing you money so went to buy our own so we don't keep bothering you about yours. . .".

The new machines were installed on September 4. The old machines were moved into the garage. The tenants have asked the landlord to reimburse them for the cost of the washer and dryer.

The landlord's position is that the tenants did not ask her in advance if she would pay for the machines; she did not agree to pay for the machines; and the tenants are free to take their machines with them when they move out.

Flood Cleanup

The tenants gave the landlord an invoice dated August 30 in the amount of \$400.00 for cleaning up the water from the leak. The invoice specifies four hours for taking time off work and four hours to clean up the water from the tile floor and carpets.

The landlord's position is that she did not see the flood; she does not know how big the flood was; she does not trust the tenants' photographs of the flood; and she does not know if the flood was a genuine mishap or if the tenants intentionally broke the washer in order to get a new washer and dryer into the unit before she returned to Canada.

Repairs to Bedroom Ceiling

On July 23, 2012 the tenants sent the landlord an e-mail complaining about a water leak into the second bedroom. The landlord had rented out her unit while she was away and those tenants had had a shower leak.

The landlord acknowledged that there had been a leak. When she returned from her 2012 absence she looked at the ceiling. She said she saw a mark about the size of her arm and that a few days later the female tenant told her their son had put a poster over the mark.

There does not appear to have been any other written communication on this topic between the summer of 2012 and the fall of 2013.

The tenant testified that over time the stain grew in size, there was an odor in the room, and their 18 year old son was getting stuffy so he decided to go ahead and fix the ceiling. He cut out the damaged area, treated it with bleach, re-drywalled, painted it with Kilz, and then put on two coats of paint. The entire area was about five feet by six feet. The tenant said he had to leave work to do this because his son sleeps in this room at night.

The tenants submitted an invoice to the landlord in the amount of \$375.00 for labour and materials after this application for dispute resolution had been issued. The invoice is dated October 7 but the tenant said the work was done before the application for dispute resolution was filed on September 23. However, included in the tenants' evidence is an e-mail to the landlord dated September 30 in which the tenant asks the landlord what she was going to do about a number of issues including the bedroom ceiling.

The landlord's position is that the tenants didn't tell her the stain had grown or that there was any odor; they should have asked her before undertaking the work; and she has not been in the room since October so she cannot comment on the quality of the work.

Medications

The tenants claim the cost of prescription medications for their son in the amount of \$71.84. They say that he started getting stuffy when the ceiling leak occurred. They say they had him tested for allergies and the tests were negative. They are of the view that the water damage in his bedroom was the cause of his health problems.

The tenants filed the information sheets for their son's prescriptions. The first two are dated April 29. They say that one medication is typically used to treat infections and the other is typically used for nasal congestion and to relieve a cough. The third item is dated August 1 and says that medication is typically used for allergic rhinitis.

Kitchen Sink

The tenants claim \$472.50 for labour, materials, and GST to repair the kitchen cabinets. The invoice for this work is dated October 7, 2013. This claim was also submitted after the application for dispute resolution had been issued.

The kitchen countertop is granite and the sink is an under-mounted style. The kitchen cabinets were just placed against the foundation; a wall was not built between the cabinets and the foundation.

The tenants say they spoke to the landlord about the leak about a year ago but she did not think it was very important.

On September 29, a week after issuing this application for dispute resolution, the tenant wrote the landlord about water leaking from the kitchen sink into the cabinets below which was causing mold. They reported that the mold was black in colour and had a bad smell. The landlord responded by saying she would come the following day to have a look and would then book an appointment with the plumber.

The landlord also wrote the tenants as follows:

"This is the first time you inform the leaking around kitchen sink tap. There is no leaking in the kitchen sink when I rented my suit to you on February 15, 2013. There was waterproofed special glue around the kitchen sink rim and tap rim to resist water leak, but the waterproofed glue has gone now. You are extremely clean persons, so I guess you cleaned the sink rim and tap rim with dish scrubbers many times, and that's the reason the waterproofed glue has gone.

Actually you caused the leaking and you should fix the leak."

On September 30 at 6:12 pm the landlord wrote the tenants saying the plumber who had fixed the sink previously could come next week and could they wait one week to which the tenant replied: "I guess we have to wait a week."

The landlord testified that when she looked under the sink on September 30 she did see mold. She agreed that the sink and the cabinet needed to be fixed.

The plumber came on October 10. He found that there was no silicone seal between the countertop and the sink. He put silicone in and tightened everything up. The landlord asked the plumber to look at the mold and was informed by the female tenant that the male tenant had already cleaned and painted the area.

The tenant testified that he cleaned the area under and behind the lower counter and sprayed it with a product to kill any spores, caulked the area and applied a primer coat to seal it.

The landlord's position is that they did not say anything about the leak until September 29 and she had the problem repaired within a reasonable time. She also argues that the tenants should not have gone ahead and done any work without getting her permission first.

Shower Stop

The tenants claim \$42.56 for a strip they installed on the bottom of the shower door in November 2012. The issue is that the glass shower doors were not properly installed in any of the bathrooms in the house and they all leak. The landlord had a glass company look at the showers about a year ago. They adjusted the doors as best they could and the leaking was reduced but not eliminated. The tenant bought and adapted a plastic strip for the door to further minimize the leakage.

Showerhead Bar

The tenants claim \$100.78 for a replacement showerhead bar bought on April 14, 2012. They say the old one was plastic and it wore out. They testified that the female tenant spoke to the landlord ahead of time and the landlord did not agree to this expense. The landlord testified that the tenants never told her they had replaced this item and that maybe the tenants had broken it.

Hydro Bill

Despite the clear wording of the tenancy agreement the hydro bill has remained a contentious topic. After her return from China the landlord demanded payment of two thirds of the hydro bill from the tenants on the grounds that she was away for most of the time and should not have to pay for hydro while she was not there. She also gave the tenant's information about another one of her properties to illustrate the much higher use of hydro at this property compared to her other property. In response the tenants wrote to the landlord reminding her of the terms of their agreement.

The landlord has continued to press for an increased share of the hydro bill from the tenants, even asking me orally in the hearing to make such an order. A substantial part of her oral and written testimony was devoted to this issue.

Loss of Quiet Enjoyment

After the tenants issued and served the application for dispute resolution they served and filed a letter also claiming damages for loss of quiet enjoyment in the amount of \$2724.00 calculated as 4% of the total rent paid by the tenants during their tenancy and an additional \$400.00 for loss of wages incurred while dealing with the landlord. The claim is based on the landlord's continual efforts to be paid a greater share of the utilities; the landlord's inaction on repairs requested; and the landlord's failure to ensure that the rental unit was safe and healthy.

Illegal Rent Increase

The tenants subsequently served and filed a letter in which they claimed that the rent increase in February 2013 was illegal. They also ask for a ruling on what increase may be imposed in February 2014.

Analysis

Washer and Dryer

The *Residential Tenancy Act* sets out the situations where a tenant who goes ahead with "emergency repairs" is entitled to reimbursement from the landlord for the cost of those repairs. "Emergency repairs" are carefully defined by the legislation. The definition that applies to this situation is repairs that are urgent; necessary for the health or safety of anyone for the preservation or use of residential property; and made for the purpose of repairing major leaks in pipes or damaged or blocked water or sewer or plumbing fixtures. Stopping the water from pumping out of the washing machine was an emergency repair; replacing the washing machines was not.

It appears from the tenant's invoice that he is claiming for the same four hours twice; once for the time away from his business and again for the same time spent cleaning up the water. I allow the tenant \$188.00 for this item.

According to the tenants' written material they bought a replacement for the non-working washing machine within six hours of the flood occurring. They also bought a replacement for the dryer that was working.

The tenants could have used a Laundromat for a week or so until the landlord had returned to Canada, and had an opportunity to look at the situation and to make her own arrangements. If necessary the tenants could have filed for a repair order and/or

an order reducing their rent for service not provided and compensation for the cost of the Laundromat. They did not give the landlord a reasonable opportunity to resolve the situation and she is not obliged to reimburse them for the cost of the new washer and dryer or their installation.

The washer and dryer are the property of the tenants and they may deal with them (move or sell) as they wish at the end of this tenancy.

Repairs to Bedroom Ceiling

This repair is not defined by the *Act* as an emergency repair. If such a repair is required and a landlord has not responded to the tenant's request for a repair within a reasonable period of time the tenant may apply to the RTB for a repair order.

There is no record of any communication between the parties on this item between the summer of 2012 and after the tenants' application for dispute resolution had been issued.

Basic contract law is that a person is not responsible for payments of services provided that were neither requested nor authorized in advance. Clearly the landlord had not authorized this repair in advance nor had she asked the tenant to do the work.

The tenants had filed their request for a repair order on September 23. Instead of waiting for the hearing which was scheduled for October 30 the tenant went ahead with the repair and assumed the risk that he might not get paid for it.

I find that the tenants did not give the landlord a reasonable opportunity to address this situation. The landlord does not have an obligation under the *Act* or contract law to pay for this repair.

On the other hand, the evidence shows that the ceiling had water damage and the procedure followed by the tenant was thorough. The landlord has benefitted from the tenant's work and the tenant should be compensated for that.

The tenant's invoice does not provide any breakdown between labour and materials nor does it give any detail about the time spent on the job. I do not accept the tenant's claim that he had to leave his business to do this repair because his son slept in this room. This type of repair has to be done over time because each layer of drywall mud and paint has to dry before the next coat can be applied. Their son is eighteen years old – presumably there are some hours in the day between when the tenant finishes work and this young man goes to bed. In addition, the tenant has charged his

professional rate of \$47.00. If the landlord had been given the opportunity she may have found someone who could have done the work for her at a lower rate. Accordingly, having considered all of these factors, I allow the tenants \$250.00 for this repair.

Repairs to the Kitchen Cabinets

A similar analysis applies to this claim.

There is no record of any written communication between the parties on this topic until after the application for dispute resolution had been issued. The landlord did have a plumber in to fix the sink within a reasonable period of time. The tenants did not give the landlord a reasonable opportunity to find her own contractor to do the work.

However, the landlord's evidence is that she did see mold before the plumber came and the area was all white by the time the plumber arrived. She did obtain a benefit from the tenant's work. I allow the tenants \$250.00 for this repair.

Medications

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

The evidence does not establish that the son's symptoms in April and August, which appear to be unrelated, were caused solely by the water damage to the ceiling of his bedroom. This claim is dismissed.

Shower Strip

The evidence is that the shower doors leak despite efforts to fix them. I accept the tenants' evidence that their modification reduces the amount of water going onto the landlord's floor. Since this is to the landlord's benefit I allow the tenants' claim of \$42.56.

Showerhead Bar

The evidence is that the landlord did not agree to pay for this item and the tenants went ahead anyway. The evidence in support of the need for this repair is skimpy. Accordingly, this claim is dismissed.

Share of the Hydro Account

The landlord and the tenant are experienced business people. The hydro bill was an issue during the first year of this tenancy. Although neither party was required to do so, they signed a new agreement that specified that the tenants were to pay one third of the water, electricity, and gas for the entire building. The parties are bound by their agreement. The landlord has no right to ask for and the tenants have no obligation to pay any more than the amount specified in their contract.

Rent Increase

Section 43(1) of the *Act* states that a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations;
- as ordered by an arbitrator; or,
- as agreed to by the tenant in writing.

Once again the parties are bound their agreement. The rent being charged since February 2013 is legal.

On August 27, 2013 it was announced on the RTB website that for a conventional residential tenancy rent increase that takes effect in 2014, the allowable increase is 2.2%. Of course, a landlord may only impose this increase if they give notice in the prescribed manner.

Loss of Quiet Enjoyment

There are aspects of dealing with this landlord that would be frustrating and stressful. The evidence from both parties indicates that when damage is reported or repairs are requested her first response is that the tenants must have broken it and/or the problem was caused because they clean too much. Her e-mail of September 29, 2013, quoted above is a typical response.

Secondly, her repeated and continuing demands for a larger payment for the utilities, despite the clear terms of the tenancy agreement, are an unnecessary and unwarranted part of the tenants' lives.

The law related to claims for loss of quiet enjoyment is summarized in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment*. Based on the evidence before me I am not prepared to find that the landlord's behaviour as amounted to a breach of the tenants' right to quiet enjoyment.

Repair Order

As the tenants have fixed everything that bothered them, no order is required.

Rent Reduction

There is no evidence that the tenants have been without services for any period of time so this claim is dismissed.

Photocopying, Photographs, Etc

The tenants claimed the cost of preparing their evidence. As explained in the hearing, the Act does not allow an arbitrator to award any party the cost of preparing their evidence or participating in the hearing. This claim is dismissed.

Filing Fee

As the tenants were partially successful on their application they are entitled to reimbursement from the landlord of the \$50.00 fee they paid to file it.

Conclusion

I award the tenants a monetary order in the amount of \$780.56, as itemized above.

Pursuant to section 72 this amount may be deducted from the next rent payment due to the landlord.

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: January 03, 2014

Residential Tenancy Branch

