



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause; for an order that the landlord makes repairs to the unit, site, or property; for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and to recover the RTB filing fee.

Both the landlords and tenants attended the teleconference hearing and gave affirmed evidence.

The parties advised that the notice to end tenancy for cause was cancelled.

Issue(s) to be Decided

Are the tenants entitled to an order that the landlord make repairs to the unit, site, or property?
Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The landlord advised that the tenants have been served with a notice to end tenancy for landlord's use, because the property has been sold. Accordingly, the tenancy will end on the effective date of that notice which is September 30, 2014.

The tenants seek certain repairs to the rental unit. The tenants also seek retroactive rent reductions for periods of time when they say various appliances were not operative.

The tenants gave evidence that they seek the following repairs:

1. Replacement of cracked tiles and testing for mold under the damaged areas
2. Replacement of bedroom ceiling fan or rent reduction for loss of ceiling fan
3. Repair of kitchen window
4. Repair of bifold doors in two bedrooms and hallway

Tiles – The tenants gave evidence that the fridge leaked for a period of time and the bathroom sink leaked for a period of time. These leaks led to water on the kitchen and bathroom floors.

The tenants say the water on the floor soaked the subfloor, causing it to swell and crack some floor tiles.

The tenants say they are concerned about possible health risks from mold which may have developed in the subfloor. They seek an order that the landlords test for mold and replace the cracked tiles.

The landlord gave evidence that two tiles are cracked by the fridge and one tile in front of the bathroom sink. She says the new owners of the house purchased it "as is" and she does not intend to replace tile before the October 4, 2014 completion date. The landlord says the tenant has not provided proof there is any health-related problem. The landlord's evidence is that a moisture test was conducted on March 6, 2014 and no problems were identified. Also, the new owners had a home inspection done on June 12, 2014 and no problems related to the floor or mold were identified.

The tenants say the flooring would have had to be removed to test properly, and this was not done.

Bedroom ceiling fan – The tenant gave evidence that the master bedroom had a ceiling fan at the start of the tenancy, but it was not properly installed. She says the landlord replaced the ceiling fan with an overhead light and as a result, the room is too hot in the summer months.

The landlord gave evidence that she changed the ceiling fixture from a ceiling fan, which was not up to code, to a light fixture in May 2014. She says the tenant did not raise any concerns at the time about the loss of a ceiling fan.

The tenants provided a copy of email correspondence dated May 10, 2014 in which the tenants note the fan box must be replaced (the fan box had been flagged by an electrical inspection as needing replacement). After some back and forth emails, the landlord states "Also, I have chosen to replace the fan at this time with a standard light."

A previous hearing between the parties resulted in a decision by another Arbitrator (RTB file 818860 & 819199). In that decision, the Arbitrator's summary of evidence states the tenants removed the ceiling fan themselves because it wobbled. I have assumed the Arbitrator's summary of evidence is accurate.

Kitchen window – The tenants gave evidence that the window was fused shut. She says her mother attempted to open it in the summer of 2013 and the plastic handle broke off. The tenants want the window to be capable of being opened, closed, and securely locked.

The landlord gave evidence that they only discovered the kitchen window was broken when they did a home inspection on March 6, 2014. She says the cracked handle was not reported to them. Further, the landlord says the window can still be opened and she saw the window open

when she was doing yard work recently. The tenant denies the window has recently been open. The landlord agrees to look at the window shortly after the hearing and make necessary repairs.

The tenants provided a copy of email correspondence dated May 22, 2014 in which they wrote: "Its getting very very hot and the window needs to be fixed as well in our kitchen also because it is not secure against break-ins the way it is."

Closet bi-fold doors – The tenants gave evidence that the closet doors in two bedrooms and the hallway are falling off because they have not been properly installed.

The landlord gave evidence that the doors are properly installed. She says the doors are fixed to the walls, rather than the floor because they cannot be screwed into the laminate flooring. The landlord says the plastic glides which hold the doors in the overhead tracks are missing, and that is why the doors are not staying on. The landlord says this issue has not been raised by the tenants before this hearing.

The tenant denies that any pieces are missing from the closet doors.

The tenants seek the following retroactive rent reductions:

1. Fridge leak – \$25.00 per month (March through May 2014)
2. Broken sink – \$100.00 per month (Jan through May 2014)
3. Tub taps – \$50.00 per month (Jan through May 2014)
4. Fence broken – \$50.00 per month (Jan through April 2014)
5. Stove front panel missing – \$50.00 per month (March through June 2014)
6. Kitchen window broken – \$25.00 per month (June, July 2014)
7. Bedroom fan removed – \$25.00 per month (June, July 2014)

Fridge leak – The tenants gave evidence there has been a problem with the fridge leaking since they moved in. The landlords had the fridge repaired once, but the problem recurred. The tenants say they emailed the landlords to advise them of the recurrence on March 8, 2014 but the landlord did not have the fridge repaired until approximately the end of May 2014. The tenants say they cleaned up water from the floor every day during that period, and seek a rent reduction of \$25.00 per month for the three month period.

The landlords gave evidence that they had the fridge repaired in about July 2013. They next heard from the tenants in March 2014 and at that time the tenants said the fridge was not continually leaking, just when they bought groceries. The landlord inspected the rental unit on March 6, 2014 and there was no water on the floor that day. The landlords next heard from the tenants in mid-April 2014 when the tenants sent an email saying the fridge was "still leaking". The landlord next heard from the tenants in May and had the fridge repaired May 23, 2014.

The tenants provided copies of email correspondence referring to the fridge leak on March 8, May 10, May 22, and May 23, 2014. The parties dispute whether any actions by the tenants (such as having the freezer too full) caused the leak.

Broken sink – The tenants gave evidence that the bathroom sink in the main bathroom developed a leak and became unusable because water would pour into the area under the sink every time they turned the taps on. The tenants' evidence is that they informed the landlord of the problem in May 2013 and told her they would see if one of the tenant's fathers had an extra sink. The tenants say the sink was eventually replaced in June 2014. The tenants say they could not use the sink from January through May 2013 and seek compensation of \$100.00 per month for the loss of use of the sink.

The parties agree there were various chips in the sink, but disagree about whether the tenants were responsible for some of them.

The tenants gave evidence that they provided the landlord with a letter in January 2014 listing their various grievances regarding the rental unit (the tenants' letter was not in evidence). The landlord's reply dated January 22, 2014 was in evidence. That letter references chips in the sink but does not address leaking.

The tenants provided a copy of a May 10, 2014 email to the landlord raising various concerns. That email states "Our sink is leaking badly and I have to constantly check the bowl I've placed underneath it so it doesn't overflow and damage our stuff and your house."

The landlord says she became aware that the sink was leaking in the summer of 2013. At that time, the sink was only leaking if water came up as high as the overflow hole. She said that when the rental unit was inspected on March 6, 2014, the taps were turned on and the water went down the drain (and did not leak). She said she only found out the sink was worse at the April 28 hearing. She said she only received one email from the tenants regarding the sink between the summer of 2013 and the April 2014 arbitration. Her evidence is that the tenants said they would replace the sink, and it only leaked when water came above the overflow hole. A new custom sink then had to be ordered. The landlord gave evidence that the sink was replaced on June 5, 2014.

The tenants provided a copy of a January 2014 text message exchange between the parties, regarding various issues of contention. One message from the tenants says "we want someone in to fix the sink ...".

The tenants say they discovered their father did not have an extra sink and told the landlord that in May 2013. The landlord says the tenants never told her that they would not be replacing the sink until the April 2014 arbitration.

Tub taps – The tenants gave evidence that the bathtub hot water tap could not be turned off all the way, and this resulted in a steady loss of hot water.

The landlord gave evidence that the tenants did not tell her that the bathtub hot water tap was leaking. Instead, she and the plumber discovered the problem when they were in to check the sink. The landlord subsequently had the hot water tap repaired.

Fence broken – The tenants gave evidence that some slats of wood were missing from the fence. The parties disagree about whether the tenants are responsible for the problem. The tenants gave evidence that this impacted them because they did not feel comfortable allowing their children to play in the yard, and there was more litter in the yard from passers-by. The tenants say they advised the landlord of the problem in October 2013 and the fence was fixed May 29, 2014. They claim compensation of \$50.00 per month from January through April 2014.

The landlord gave evidence that she repaired the fence when the weather permitted, in April or May 2014. She says the yard has a side opening, and so is not a secure area even when the fence is intact.

Stove front panel missing – The tenants gave evidence that the front cover of the oven door came off twice. The first time, it was repaired promptly but the second time it was not. The tenants say they did not use the oven when the front cover was off, because they perceived it to be dangerous.

The parties disagree about whether the tenants are responsible for the front cover coming off the oven door. The landlord gave evidence that the oven was functional for the entire tenancy. She says the tenants had to wait about 1.5 months for the second repair.

Kitchen window broken – As noted above, the tenants seek compensation for loss of use of the kitchen window in summer months.

Bedroom fan removed – As noted above, the tenants removed the master bedroom ceiling fan. The landlord replaced it with an overhead light, and the tenants seek compensation for loss of the fan in summer months.

Analysis

When tenants claim money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, the burden of proof is on the tenants to show that they suffered damage or loss and that the landlord's actions or inaction caused the tenants' damage or loss.

Repair Order Claims

I decline to order that the landlord make any repairs for the reasons that follow.

Tiles – I accept the landlord's evidence that only three tiles are cracked. I find this will not affect the tenancy in any material way in the remaining two months of tenancy. I find the tenants have not presented evidence that there is any possible risk to their health based on the possible existence of mold, and I decline to order testing for mold.

Ceiling fan – I accept the tenants' evidence that the loss of the ceiling fan reduced the value of their tenancy in the summer months, and I have addressed this below in the discussion regarding rent reduction claims. Since the tenancy is coming to an end shortly and since the new owners purchased the house as is, I find it is more appropriate to deal with this issue as a rent reduction claim than to order repairs.

Kitchen window – The landlord has agreed to inspect and repair the kitchen window as soon as reasonably possible. I accept the landlord's evidence that the landlords first became aware there was a problem with the kitchen window on March 6, 2014. The parties disagree about whether the window was capable of being opened at the date of the hearing. I find the tenants' May 22, 2014 email reference to the heat suggests the tenants could not open the window at that point. I therefore find the tenants have not had use of the kitchen window and this has reduced the value of the tenancy in the summer months. I have dealt with this below in the discussion regarding rent reduction claims.

Closet doors – The parties gave conflicting evidence about what, if anything, is wrong with the closet doors. The burden of proof is on the party seeking the order for repair to prove that repairs are required. Without photographic and/or independent evidence that the closet doors are broken, I decline to make an order for their repair.

Rent Reduction Claims

Fridge leak – I accept the tenants' evidence that the fridge leaked from about March 8, 2014 until the end of May 2014 and this necessitated that the tenants clean up water from the floor every day. The tenants seek compensation of \$25.00 per month for this inconvenience. I find the inconvenience to the tenants was very minor in nature and I therefore decline to award compensation.

Broken sink – I accept the evidence of the parties that the landlord was notified in the summer of 2013 that the bathroom sink leaked. At that point, the sink only leaked when water entered the overflow hole. The tenants told the landlord they might be able to get a replacement sink. The parties disagree about whether the tenants told the landlord, prior to April 2014, that they could not in fact get a replacement sink. I must rely on the documentary evidence since there is no way to know which party provided accurate evidence at the hearing on this point.

The earliest documentary evidence which mentions the sink is a text message dated January 14th which reads in part "We want someone in to fix the sink also and our closet door fell off and all the floor dividers have come loose and the garage isn't properly sealed and is a very big issue." Although buried in a list of grievances, the phrase "we want someone in to fix the sink" should have signaled to the landlord that the tenants would not be supplying a sink.

I accept the evidence of the landlord that she understood the sink only leaked when it was filled up to the overflow hole, until April 28, 2014 when she found out the sink leak had become worse. The tenants did not provide evidence to show that they informed the landlord that the sink leaked even when water was not filled as high as the overflow hole. I accept the landlord's evidence that on March 6, 2014 when the sink was tested, it did not leak when not filled as high as the overflow hole.

I find there was inconvenience to the tenants in using a sink that leaked when water got into the overflow hole, and later when it leaked when used at all. This period of inconvenience lasted from May 2013 (I accept the tenants' evidence on the date since the tenants' evidence was more precise on this point) until June 2014, approximately one year. However, the tenants have not proved that the landlord knew they would not be supplying a new sink until January 2014. By the end of April 2014, the sink became unusable because it leaked when used at all.

I find the tenants are entitled to some compensation for the period January 2014 (the first time they implied to the landlord they would not be supplying a new sink) until June 2014. I set the compensation at \$25.00 per month for the three month period from mid-January until mid-April (when the tenants advised at the previous arbitration that the sink had become worse, leaking when used at all). I set the compensation at \$75.00 for the period from mid-April until the sink was fixed, since the problem was worse in that period. The total sink-related compensation is \$150.00.

Tub taps – I accept the landlord's evidence that the tenants did not tell her there was a problem with the bathtub hot water tap. The documentary evidence submitted does not indicate the tenants complained about the hot water tap prior to the landlord discovering the problem while in the bathroom to address another issue. Since the landlord was not advised of the problem, the tenants are not entitled to compensation for any failure by the landlord to address the problem.

Broken Fence – I accept the landlord's evidence that the yard is not secure, even when the fence is intact. I therefore find that the period of time, during the winter months, when the fence was not intact did not materially impact the tenant's use and enjoyment of the rental property. For that reason, compensation is not warranted.

Stove front panel missing – The parties disagree about whether the oven was usable during the time the front panel was off the oven door. It is the tenants' burden of proof, and the tenants did

not provide evidence that the missing front panel impacted their use of the oven. For that reason, compensation is not warranted.

Kitchen window – As noted above, I accept the tenants' evidence that they have not had use of the kitchen window and this has reduced the value of the tenancy in the summer months. The landlord has been aware of the problem with the window since March 6, 2014 and has promised to address it shortly. I find it is appropriate to reduce rent by \$25.00 per month for the months of June and July 2014, for a total of \$50.00.

Bedroom ceiling fan – As noted above, I accept the tenants' evidence that the loss of the ceiling fan has reduced the value of the tenancy in the summer months. However, I note that the tenants removed the ceiling fan themselves because it wobbled. If there is an apparent problem with a ceiling fan, the appropriate course of action for a tenant is to ask the landlord to have it inspected and/or repaired. If the landlord refuses, the tenant may seek an order for repair. In this case, it does not appear that the tenants took those actions. Since the tenants removed the ceiling fan themselves, I find they are not entitled to compensation for loss of the amenity.

The tenants seek to recover their RTB filing fee of \$50.00. Although the tenants have had some success in their application, their numerous claims have for the most part not been successful. For that reason, I decline to award the tenants their \$50.00 filing fee.

Since the tenants will likely have paid rent for August 2014 by the time they receive this decision and since they may not be paying rent for September 2014 (the last month of tenancy) based on the eviction for landlord's use, I find it is appropriate to grant the tenants a monetary order rather than ordering they reduce their rent payments by the amounts due to them.

The total amount due the tenants is \$200.00. I grant the tenants a monetary order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenants a monetary order for \$200.00.

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 12, 2014

