



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, MNDC, O, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenants applied for repair orders, including emergency repairs, and monetary compensation for loss of use and enjoyment due to the landlord's failure to make repairs. The landlord applied for monetary compensation from the tenants for several reasons but subsequently withdrew all monetary claims except for that related to excessive consumption of utilities. Both parties appeared or were represented at the originally scheduled hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

These Applications for Dispute Resolution were heard over several hours on three different dates. Two Interim Decisions were issued and this decision should be read in conjunction with those Interim Decisions.

On the first date of hearing the parties confirmed receipt of hearing documents from the other with one exception: the landlord stated the two witness statements referred to by the tenants in their submissions were not included in the packages he received. The tenants claimed the witness statements were included in the package given to the landlord. I did not accept the witness statements into evidence as I was unsatisfied by the disputed verbal testimony that the landlord was in receipt of those documents. The tenants indicated that one of the persons who provided a witness statement was available to testify during the hearing. The landlord objected to hearing from the witness as the tenants had not provided a witness list in their submissions. During the first and second hearing dates only emergency repairs were dealt with and the witness statement did not pertain to the emergency repairs identified by the tenants and it was unnecessary to call the tenants' witnesses. During the last day of hearing, the tenants

did not call any witnesses to testify. Nor, did the landlord call any witnesses to testify. Therefore, I have not considered any submissions of witnesses in making this decision.

During the two periods of adjournment the tenants served a considerable amount of additional evidence and submissions. The landlord objected to inclusion of submissions and evidence provided by the tenants while the hearing was adjourned. The Rules of Procedure provide that evidence must be served prior to the commencement of the hearing, unless ordered or requested by the Arbitrator. As I had issued orders with respect to repairs during the first two hearing dates, I found the new evidence pertaining to the status of those repairs to be pertinent and I permitted admission of that evidence. However, I have excluded the other evidence and submissions that should have been served prior to the originally scheduled hearing date of June 25, 2014.

In filing the landlord's Application for Dispute Resolution, the landlord had indicated the dispute code pertaining to "Other". I proceeded to review his written submissions filed the following day to determine whether the submissions were sufficiently clear so as to indicate the nature of the landlord's dispute. I found it clear from the landlord's submissions that he was seeking a Monetary Order from the tenants for over-consumption of utilities and I amended his Application for Dispute Resolution to indicate the applicable dispute code. The landlord also withdrew all of the other monetary claims against the tenants with the exception of his claim for over-consumption of utilities.

During the course of this hearing it was brought to my attention that the parties had other dispute resolution proceedings scheduled to deal with Notices to End Tenancy. By way of a decision issued by another Arbitrator on November 14, 2014 the tenancy was set to end November 30, 2014. As my decision is being issued after the tenancy has ended, I find it unnecessary to further consider the tenants' request for repair orders.

On another note, both parties requested that their monetary claims be amended to reflect their continued losses due to the passage of time since these applications were originally filed. I permitted both parties to increase their claims as the basis for the claims remained unchanged.

In light of the above, the remainder of this decision deals with the monetary claims filed by each party, as amended.

Issue(s) to be determined

1. Are the tenants entitled to compensation for loss of use and enjoyment due to the landlord's failure to make repairs?
2. Is the landlord entitled to compensation from the tenant for excessive consumption of utilities?

Background and Evidence

The tenancy commenced October 1, 2013 and the monthly rent is \$780.00. The tenancy agreement provides that the monthly rent includes water, electricity and heat, among other things. The rental unit is one of two basement suites and the landlord resides in the upper unit.

Tenant's Application for Dispute Resolution

The tenants seek compensation equivalent to one-half of their monthly rent for the duration of their tenancy. During the hearing, the tenants explained that the majority of their claim is attributable to inadequate heating and an insufficient supply of hot water and, to a lesser extent, the other damages or loss they suffered due to: an inadequate range hood fan; a leaking shower door; a leaking kitchen faucet; a mouldy kitchen cabinet; and, insects.

Although I was provided a considerable amount of verbal and written submissions from both parties, I have summarized the parties' respective positions below with a view to brevity.

Inadequate heat

The rental unit is heated by a forced air natural gas furnace that is controlled by a thermostat in the landlord's unit. The tenants claim that their rental unit is too cold, especially the "small room". The tenants provided a listing of temperatures they experienced in their rental unit between the dates of November 12, 2013 and May 7, 2014. The temperatures recorded by the tenants range from 17 degrees to 22 degrees Celsius. The tenants testified that when they had notified the landlord that it was too cold in their suite and the landlord would turn up the thermostat but would only do this temporarily which necessitated several requests to the landlord. The tenants were of the position that they should be provided temperatures of 21 – 22 degrees.

The landlord submitted that he has set the thermostat at 72 degrees Fahrenheit (22.2 degrees Celsius) and leaves it at this temperature. The landlord submitted that the other tenants in the other basement suite have never complained about the temperature. Also, when the landlord went into the rental unit on occasion the temperature was quite warm. Further, the landlord pointed to the utility bills he submitted into evidence to show that the consumption of utilities increased significantly since the tenants moved in. The landlord submitted that most Canadian households set their home temperature to 20 – 22 degrees when they are home and 16 – 18 degrees when they are asleep.

The tenants submitted that a temperature of 72 degrees upstairs does not mean the rental unit is at that temperature as basement units are usually colder. The tenants further submitted that there are gaps around their entry door that let heat escape.

Insufficient supply of hot water

The tenants submit that there is an insufficient quantity of hot water and that due to its inadequacy they cannot take back-to-back showers or take a shower after doing dishes. The male tenant also described how he experienced a shortage of hot water after leaving the hot water tap running for 10 minutes while he brushed his teeth. The tenants explained that once the hot water runs out, they have to wait 50 – 60 minutes for the hot water supply to recover. The tenants submitted that upon complaining to the landlord the landlord blamed them for using too much hot water.

When asked about communicating their concerns to the landlord the male tenant stated that he had not complained to the landlord. The female tenant testified that complaints were made verbally and then she submitted that they were done by way of text messages.

The landlord explained that hot water is supplied to both basement suites and the landlord's unit by way of a natural gas 50 gallon hot water tank. The landlord submitted that the system is modern and was inspected recently.

The landlord submitted that hot water had never been an issue before these tenants moved in and submitted that the tenants' claims are retaliatory for him complaining to them that they were draining the hot water tank.

The landlord was of the position that the hot water tank is sufficient for six people that currently use the system but that no hot water tank would be sufficient if a person is determined to drain it like the tenants are. The landlord submitted that he can hear the tenants running water for long periods of time.

The landlord also pointed to the gas bills that show a significant increase in consumption as indication that the tenants have been draining the hot water tank. The landlord also pointed out that since serving them with evidence about the high utility bills and initiating a claim to recover a portion of the utility bills from the tenants the problem has decreased.

The tenants responded by stating they received hydro bills, but did not receive gas bills. The tenants also pointed out that the landlord waited until just prior to the last hearing date to have the hot water tank inspected and during a previous hearing the landlord informed the Arbitrator the hot water tank was 60 gallons.

Lack of stove/oven for five days

The tenants submitted that they lost use of the stove/oven for five days and should be compensated for this. The tenants explained that the element would not shut off properly so they stopped using the appliance.

The tenants provided a transcript of all of the text messages exchanged between the parties with respect to the replacement of the stove. Both parties provided written submissions as to their version of events as to the replacement of the stove.

Based upon the above submissions, the following events took place. The tenants messaged the landlord on January 21, 2014 that their stove was not working properly as the element would not shut off. The landlord inspected the stove shortly thereafter and indicated he would repair it or replace it. The tenants posted a notice requesting a repair on the landlord's door on January 23, 2014. The landlord measured the space on January 25, 2014 and a replacement stove was installed on January 26, 2014.

The landlord was of the position the stove was replaced within a reasonable amount of time in the circumstances. The landlord had submitted that he wife suffered a miscarriage on January 23, 2014 and was taken to emergency on January 25, 2014.

Inadequate kitchen fan

The tenants submit that the exhaust fan is very loud and does not suck up smoke from their cooking activities despite leaving the fan on for hours. The tenants submitted that whenever they cooked "huge amounts of smoke would bellow from the oven" and that the landlord blamed their cooking methods for this. The tenants stated that they looked for an exterior vent but did not see one for their exhaust fan.

The landlord submitted that it was he who complained to the tenants that their cooking smells were bothersome to him and his wife and now the tenants are using the fan as an excuse. The landlord submitted that the exhaust fan does vent to the outside of the house and that a technician checked its functionality. As a result of that inspection, the screen was found to be dirty so the landlord purchased a new screen. The landlord pointed out that the loudness of the fan indicates that it is working.

Leaking shower door

The tenants submitted that water leaks under the shower door and onto the bathroom floor when they take a shower. The tenants acknowledge that the landlord had responded by applying silicone caulking on two occasions but were of the position that the problem remains. The tenants were of the position the landlords attempts to rectify the issue were inadequate and their requests for a proper repair go ignored.

The landlord submitted that the previous tenants must have removed the silicone caulking in their cleaning efforts. Upon receiving complaints from the tenants he applied caulking on two occasions; however, he did not hear further from the tenants about this problem until after a confrontation took place in April 2014 which led to the tenants raising all sorts of issues and their Application for Dispute Resolution which was filed on May 8, 2014.

Leaking kitchen faucet

The tenants experienced a leaking faucet in the kitchen since moving in; however, the text messages submitted by the tenants show communication about the kitchen faucet started in February 2014 and resumed in April 2014.

The landlord submitted that he repaired the faucet once already and he was of the position that the subsequent leak in April 2014 is due to damage being caused by the tenants. The tenants denied damaging the faucet and were of the position the first repair was inadequate.

The landlord was of the position the tenants should have to repair the faucet or pay for the repair; however, the repair was completed on July 17, 2014 because I had ordered to do so by way of the first Interim Decision.

Mouldy kitchen cabinet

It was undisputed that the cabinet became mouldy because of the leaking kitchen faucet. The landlord has submitted that the mould was caused by the tenants damaging the faucet and he was of the position he should not be responsible for this

repair. However, the landlord complied with my orders to rectify the mouldy cabinet after the second Interim Decision.

Insects

As reflected in the first Interim Decision, the landlord claimed to be unaware of an insect infestation until he received the tenants' Application for Dispute Resolution and evidence. Although the tenants had included insect infestation in a letter dated April 25, 2014 the landlord submitted that he had not received it until it was included in the evidence package.

The property was sprayed for ants after the second Interim Decision was issued. The tenants submitted that the spray also helped to reduce the number of spiders.

The landlord pointed out that the tenants never notified him that they had cleaned the old spider webs as I had ordered them to do in the second Interim Decision. The tenants stated that they had cleaned the old spider webs but they acknowledged that they had not notified the landlord of such as I had ordered them to do.

Summary

The tenants were of the position that the landlord did not take their complaints and requests for repairs seriously and that impacted their ability to use and enjoy the rental unit. The tenants submitted that the small room, hallway and kitchen accounts for one-half of the rental unit area and they suffered inadequate heat in these rooms. In addition, they suffered from inadequate hot water on a regular basis and a host of other repair issues that the landlord did not address sufficiently or in a timely manner.

The landlord was of the position that the tenants' claims were retaliatory and only started in April 2014 after a confrontation between the landlord and the male tenant. The landlord submitted that it was he who approached the tenants about their excessive use of hot water, excessive cooking odours, and breaking of fixtures and appliances. The landlord was also of the position the tenants' submissions are fabricated and not supported by evidence

Landlord's Application for Dispute Resolution

The landlord is of the position that the tenants have been using utilities excessively. The landlord seeks to recover from the tenants the amount by which the electricity and gas bills increased in comparison to the bills for the previous two years.

The landlord submitted a chart comparing electricity use in 2014 to usage in 2012 and 2013. The consumption reflected on the March 2014 and May 2014 electricity bills are significantly higher than consumption during that same time in the two preceding years. The cost of electricity bill in March 2014 was 280% greater than previous years and the cost of the electricity bill in May 2014 was 480% greater than that of previous years.

The landlord also provided a chart comparing natural gas usage in 2014 to that of 2012 and 2013. The chart shows that consumption increased significantly in the month of May 2014.

The tenants responded by pointing out that their tenancy agreement provides that heat and electricity are included in their rent and they are not responsible for paying for these utilities. The tenants also pointed out that the increased consumption may reflect use by other tenants or the landlord and his wife, over which they have no control.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. That being said, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of the respective positions of each party and the evidence accepted under the Rules of Procedure, I provide the following findings and reasons with respect to each Application for Dispute Resolution.

Tenant's Application for Dispute Resolution

Under the Act, a landlord is required to repair and maintain a rental unit so that it complies with health, safety and building laws; and, is inhabitable by a tenant but having regard for the rental unit's age, character and location. The Act also provides that a tenant is required to maintain reasonably sanitary standards and repair damage that they cause through their actions or neglect. The Act provides that normal wear and tear is not damage.

Since buildings are comprised of several mechanical systems which break down due to age, use and/or mechanical failure both a landlord and tenant should expect from time to time that repairs will be necessary. Where a tenant determines that an item is in need of repair, in order to mitigate their losses, the tenant is expected to notify the landlord. Upon notification, the landlord is afforded a reasonable amount of time to inspect the problem and facilitate any necessary repair. A reasonable amount of time is dependent upon the circumstances. Therefore, a tenant is usually not compensated for a temporary loss of use or inconvenience.

Inadequate heat

Where there is a central heat source, having thermostats in each room, as requested by the tenants, is usually not a feasible option since the furnace could receive conflicting messages from various thermostats. Thus, supplemental heat is a more realistic expectation where the heat provided by the central heat source is insufficient in the rental unit.

Upon review of the range of temperatures submitted by the tenants, I am satisfied that the majority of the time the temperature in their unit was within a reasonable range of 19 – 21 degrees Celsius. I accept the 17 degrees is on the cool side and it would appear that this temperature was experienced in the "small room"; however, I reviewed the text messages provide by the tenants with their original submission and only note one message from the tenants to the landlord concerning heat. I do not see evidence of multiple requests to the landlord as they submitted. Although, the tenants testimony was that the landlord did turn up the heat upon their requests via text message.

Further, the tenants submitted that, including the kitchen area, one-half of the rental unit was subject to insufficient heat; however, the tenants did not provide one temperature reading for the kitchen. Therefore, I find the tenants not demonstrate that one-half of the unit was too cold most of the time.

In light of the above, I find the occasional low temperature in the small room did not satisfy me that they suffered a loss so great as to warrant the significant rent abatement as they are seeking.

Inadequate supply of hot water

Hot water supplied by a tank has limited capacity and it is upon the persons using the hot water to act reasonably in its use so as to not prematurely deplete the hot water stores. I find the landlord's explanation that the tenants were draining the hot water tank to be reasonably likely considering the male tenant's statement that he left the hot water running for 10 minutes while he brushes his teeth. In my view, this action demonstrates a wanton disregard for conservation or consideration of others who use the same system. Further, I find the tenants' submission that the hot water tank recovered in 50 – 60 indicates the hot water tank is operating normally. Therefore, I find it reasonably likely that the tenants' loss of hot water is due to their own actions and I make no award to compensate them for this.

Lack of stove/oven for five days

The tenants notified the landlord of a problem with the stove in the evening of January 21, 2014; the landlord inspected the stove on January 22, 2014; measured the space on January 25, 2014 and the stove was replaced on January 26, 2014. The landlord explained in his written submission that his wife had pregnancy miscarriage on January 23, 2014 and was taken to emergency on January 25, 2014. In the circumstances, I find that the landlord's response was within the realm of reasonable. Further, the tenants still had the ability to use the microwave for cooking and heating of food. Therefore, I find the temporary loss of use of the stove to be non-compensatory in these circumstances.

Inadequate kitchen fan

Both parties provided consistent submissions that a considerable amount of smoke was generated when the tenants cooked. However, I was provided conflicting evidence from both parties as to the reason for the excessive smoke. The tenants pointed to an inadequate kitchen fan and the landlord pointed to the tenants' cooking methods that generated so much smoke the fan could not keep up. The tenants bear the burden of proof and I find there is insufficient evidence for me to make a determination. Further, considering the landlord have the fan inspected and he replaced the filter I find there is insufficient evidence to conclude the tenants are entitled to compensation for an inadequate kitchen fan.

Leaking shower door

The tenants provided a copy of a document dated February 3, 2014 in which certain repairs were requested, including the shower door, be addressed by February 8, 2014.

The tenants also provided text messages exchanged between the parties in early February 2014 with respect to the shower door. I note that the tenant notified the landlord of an issue with the shower door on February 4, 2014 and the landlord immediately responded to arrange a time to check the issue. The tenant indicated she would not be home on February 5 and on February 6, 2014 the landlord attended the unit. There were no further text messages concerning the shower after that date.

The landlord submitted that after attending the unit on February 6, 2014 to apply more caulking he did not hear further about the issue.

I note that in the tenants' letters of April 17, 2014 and April 25, 2014 there is no mention of an issue with water on the bathroom floor.

In light of the above, I find the landlord responded to the tenant's request for repairs within a reasonable amount of time and the tenants did not notify the landlord that this continued to be an issue until they filed this Application for Dispute Resolution. Therefore, I am unsatisfied that this continued to be a problem and if it was that the tenants took reasonable action to notify the landlord.

Leaking kitchen faucet

There is documentary evidence that the kitchen faucet was raised as an issue in February 2014 and April 2014. However, I find the tenants provided insufficient evidence to corroborate their position that the faucet was leaking since the day they moved in. When the leaking faucet was raised as an issue again in April 2014 a search for a replacement kitchen faucet commenced; however, the repair was not completed until after I gave the landlord an order to do so in the Interim Decision and gave the parties instructions with respect to the landlord's entry into the rental unit to facilitate repairs.

The landlord was of the position that the tenants had created barriers which delayed the process. In considering this position, I note that included in the text messages provided as evidence there was a text sent by the tenants on April 13, 2014 where the tenant states "Not rushing to do it right away." Nevertheless, between April 13, 2014 and April 19, 2014 I counted 60 text messages that were exchanged between the parties with respect to arranging a time to facilitate the repair. Upon reading the text messages it is apparent to me that the tenants were being less than accommodating and appear to not

appreciate that the landlord had to coordinate a date and time with a technician and the tenants. To demonstrate: in a text dated April 18, 2014 the landlord indicates that the repair will take place between 7:10 and 8:00 pm. The tenants request a more precise time of 7:30 or propose a smaller range of time of 7:00 – 7:30 or 7:30 – 8:00 as they find the landlord's range of 50 minutes to be unacceptable. The tenants then go on to say the landlord will have to choose one of these ranges or do it some other time. The landlord decides to appease the tenants and chooses 7:30 – 8:00 p.m.

On April 19, 2014 the landlord attends the rental unit and, based upon the written submissions of both parties, the landlord and male tenant have an argument and the landlord leaves the premises. Although each party points to the other as being aggressive both parties provided consistent submissions that the male tenant was asking the landlord how long the repair would take.

According to the landlord, the landlord's wife returned to the rental unit in an attempt to reschedule the repair; however, the tenants did not answer the door. The landlord also denied receiving the tenants' written request for repairs dated April 25, 2014.

During the hearing process, I noted that the male tenant had a tendency to be argumentative and I am inclined to accept the landlord's versions of events that the male tenant was aggressive during the attempted repair on April 19, 2014.

Considering the male tenant's behaviour and the tenant's less than accommodating responses to the landlord's attempts to facilitate a repair, I find the tenants' actions contributed significantly to the delay in the completion of this repair and I do not find them entitled to compensation for their conduct.

Mouldy kitchen cabinet

I heard that the kitchen cabinet became mouldy due to the leaking kitchen faucet. Considering I found the tenants contributed significantly to the length of time it took to have these repairs made I find that it was upon them to keep the water mopped up under the kitchen sink until such time the repair was made. Apparently, they failed to do so which resulted in mould. The landlord has remedied the mould pursuant to my previous orders for him to do so; however, I make no award to the tenants for a mouldy kitchen cabinet as their actions, or lack thereof, likely contributed to the formation of mould.

Insects

During the first day of hearing the landlord stated that he had not received a complaint about insects prior to the tenants filing their Application for Dispute Resolution as he

did not receive their letter of April 25, 2014 until he was served with their evidence package. I reviewed the text messages the tenants submitted in support of their Application and I note there are no messages about insects. Also of consideration is that I had ordered the tenants to do certain things before the pest company were to return to treat the property for spiders; however, they did not comply with my order. In light of the above, I make no award for loss of use or enjoyment due to insects.

Summary

In summary, after considering everything presented to me, I am of the view the tenant's claim for a rent abatement equivalent to one-half of their monthly rent to be excessive and fails to take into consideration their contribution to the problems they encountered. I also find the tenants' conduct lends credence to the landlord's suggestion that the tenants' claims are fabricated and retaliatory. Therefore, I dismiss their claim for compensation against the landlord.

Landlord's Application for Dispute Resolution

Since the tenancy agreement provides that utilities are included in rent, I find the landlord has not established that the tenants violated the Act, regulations or tenancy agreement and his claim to recover excessive utility costs from the tenants is dismissed.

Conclusion

The monetary claims made by both parties have been 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: December 9, 2014

Residential Tenancy Branch

