Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Lepage Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, RP, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants applied requesting compensation for damage or loss under the Act; an Order the landlord make repairs; that the tenants be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenants applied for dispute resolution at a Service BC office on December 19, 2014 and obtained the hearing package on December 24, 2014. The hearing documents and evidence were sent to the landlord via regular mail; received on January 5, 2015. The tenant submitted thirty-four photographs and a November 10, 2014 letter as evidence.

The landlord then served the tenants with forty-one pages of evidence which was received by the tenants on January 9, 2015. The landlord's evidence was given to the Residential Tenancy Branch on January 12, 2014.

The landlord submitted that the application should be dismissed as the tenants had not served by the appropriate method. When making a monetary claim section 89 of the Act requires service of the application either by personal delivery or registered mail. However, the landlord did receive the hearing documents and then submitted evidence, in response. The tenants confirmed that they had adequate time to review the landlord's evidence submission.

Therefore, I determined that any service issues were satisfied. I determined that the landlord had received the application and evidence and was given an opportunity to respond. The landlord's response did not meet the time limits set out in the Rules of Procedure; however, the parties each had ample time to review that evidence and were prepared to proceed. I determined that there was no prejudice in proceeding and declined to dismiss the application.

The landlord said that it was difficult to respond to the tenant's application in a detailed manner as the sum claimed was not fully explained. The landlord understood the tenants had requested some compensation for loss of quiet enjoyment. The landlord found the application confusing as the details of dispute section of the application did not fully set out the sum the tenants were seeking.

The application included a total claim for damage or loss in the sum of $1,000.00. The details of dispute section of the application indicated a claim in the sum of $600.00 for loss of quiet enjoyment. The tenants said that this was a claim covering the total length of the tenancy. The tenants stated that the remaining sum claimed represented a request to reduce rent owed by $200.00 per month. The tenants did not indicate if the rent reduction sought was for past and/or future rent owed; they said it was for the same period of time that the claim for loss of quiet enjoyment covered and any future rent owed.

An applicant is required to set out their claim in a manner that is understandable by the other party. After reviewing the details of the claim set out by the tenants I determined that I would consider a claim in the sum of $600.00 for loss of quiet enjoyment to the date of the hearing. The balance of the claim was declined as it was not clear what period of time the tenants claim covered; the claim also appeared to duplicate the period of time in which the claim for loss of quiet enjoyment had been made.

The parties confirmed that the tenancy is ending effective January 31, 2015; therefore no orders for repair will be issued.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of $600.00 for loss of quiet enjoyment?

Background and Evidence

The tenancy commenced on October 1, 2014 as a 1 year fixed-term tenancy ending September 15, 2015. Rent is $1,450.00 due on the 1st day of each month. A security deposit in the sum of $725.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The tenants rent a single family dwelling that has a suite in the lower level, for the tenants use.

The landlord confirmed that the tenants have given notice ending the tenancy effective January 31, 2015.

A move-in condition inspection report was completed. A copy of the inspection report supplied as evidence listed several items that were to be repaired at the start of the tenancy:

- Hang pocket door in lower level bathroom;
- Install 3 baseboard heaters;
- Install missing downspout on north side of home; and
- Recognition the roof was in poor condition.

The landlord confirmed that the pocket door and downspout have yet to be repaired. The roof replacement was completed last week. The tenants said that the gutters have yet to be cleaned out, resulting in water overflowing. This causes noise and a mess in the yard.

The parties confirmed that on October 8, 2014 a flood occurred in the lower portion of the house. That flood resulted in repairs that commenced immediately and were completed by early December. The tenants confirmed that they received $125.00 as compensation in each November and December, 2014. The ledger supplied as evidence by the landlord showed $125.00 deductions from rent owed, made on November 1, 2014 and January 15, 2015.

The claim the tenants have now made goes beyond the inconvenience of the flood repairs and relate to the failure of the landlord to make other repairs. The tenants also said that part of the claim did relate to the presence of workers in the home and the loss of use of the lower level of the home.

The tenants said that the failure to repair the downspout resulted in issues with their children playing in mud and that it affected their enjoyment of the home as they can hear rain constantly falling from the gutter to the ground. The tenants said that water leaked from the air vent in the upper bathroom. On 3 occasions the tenants had to place a bucket in the bathroom to catch water. The roof was repaired last week but the gutters have not been cleaned and the downspout has not been replaced.

The failure to rehang the bathroom door in the lower level resulted in a loss of use of that bathroom as privacy was affected. There is a window in the lower level that looks into the bathroom. The landlord said she had talked with the tenants and it was decided the restoration company would hang the pocket door. The tenants did not get back to her after that work was completed to report the door had not been repaired.

On November 10, 2014 the tenants gave the landlord a list of repairs that they wished to have completed. This list included:

- Gutter installation and cleaning;
- Plumbing hammer noise;
- Pocket door;
- Hall light fixture;
- Dryer not working properly and duct needs cleaning;
- Main level bathroom fan needs repair;
- Main bathroom ceiling leak;
- Repair cracks on driveway;
- Mold growing under stair case, carpet, coming up baseboard, on toilet tank in lower level bathroom;
- 2 windows in upper level need locks;
- Main bathroom wall needs painting; and
- Downstairs bathroom heater is broken.

The tenants supplied photographs taken of the area in the yard where the downspout was missing; the cracked driveway; areas requiring painting; signs of moisture and mold by a doorway and on a baseboard and bottom of a toilet tank; mold along a window ledge, a photo of the roof and one of a young child with a scratched cheek.

On November 10, 2014 the landlord went to the unit to view the home with the tenants. The landlord was in the process of dealing with the flood; it was a priority. The list issued by the tenants gave the landlord 11 days to make repairs; a period of time that the landlord said was unreasonable as trades people are not readily available.

The landlord noted on November 10, 2014 that the gutters and downspout were missing as new siding had just been installed on the home. The siding company was to have returned to complete installation of the downspout. Recently the roofing company had been asked to install the downspout; which has yet to occur. The landlord said that the downspout is at the far corner of the home and they could not see how this posed any issue for the children. The water falling to the ground was not in the yard, but at the edge of the building.

From the time they moved into the unit the plumbing would make a hammering sound when faucets were turned on. The landlord said the plumber was waiting for the restoration work to be completed before making this repair. On December 10, 2014 the lower level kitchen faucet and supply lines were replaced. On December 18, 2014 the plumber was able to enter the lower unit of the home but could not enter the tenant's unit to investigate the hammering sound as the tenants were not home. The plumber had contacted the tenants to say he would be there; the tenants said the plumber was not certain he could come, so the tenants remained at work. The landlord was charged $89.25 for the visit and the ledger supplied as evidence shows the landlord applied the

cost to the sum owed by the tenants. No further investigation of the hammering sound has occurred.

The tenants were not using the master bedroom on the upper level of the home as the carpeting smelled. The tenants are professional cleaners and used a carpet cleaner but it did not remove the smell. The landlord offered to replace the carpets in the spring of 2015. As a result the tenants had been sleeping in the lower level of the home. During the restoration they had a dresser in the hallway but could not easily access items in the dresser as the light fixture was not working. The landlord asked the tenants to try a new bulb and then did not hear back from the tenants. The tenants said they tried bulbs and told the landlord that bulbs had not worked.

There was no dispute that the dryer was repaired in October 2014; a copy of the invoice was supplied as evidence. The technician determined the issue was with a screen on the outside of the home, it was removed and cleaned. If issues continued it was recommended that the ducting be cleaned. The ducts have not been cleaned. The tenants said it can take over 100 minutes to dry a load. The need for repair was included in the November 10, 2014 list.

The landlord was aware of the malfunctioning bathroom fan, but as it did not have a shower or bathtub the repair was not a priority.

The tenants said that on 3 occasions they had to place a bucket in the bathroom, to catch water coming from the air vent. The landlord inspected the reported leak in the bathroom and determined it was an old leak and that painting was required. No painting has been completed.

The tenants said that their child tripped on the uneven driveway and that the broken sidewalk leading to the door is unsafe for children. Photos showed the uneven surface of the driveway and walk-way. The landlord is aware of the state of the driveway; which had not significantly changed since the start of the tenancy. The landlord is monitoring the need for repair.

The tenants said that there was mold present in a number of areas of the home; demonstrated in the photos. The tenants have not attempted to clean any of these areas. The landlord has determined the areas are very small and that the restoration company was to deal with this. The landlord was not aware the restoration company had not cleaned those areas.

The landlord suggested the tenants purchase 2 locks for the upstairs windows; the tenants placed rods in the windows so they could not be opened.

The landlord acknowledged painting is required the main bathroom wall; that work is pending.

The tenants reported that the heater in the lower bathroom was broken. The landlord inspected the heater with the tenants, who agreed to clean it with a vacuum. The tenants had said it made a burning smell; hair and debris could be seen in the heater. The landlord did not hear back from the tenants.

The landlord said they have attempted to obtain entry to the unit so the plumber could make repairs; but dates of notice of entry were not supplied. The landlord said that the tenants preferred to be home when tradespeople entered. The tenants said that they made many complaints over the phone, but those dates also could not be supplied.

The tenants said their claim is also based on the illness of their children for the past 3 months and the loss of work resulting from the illness. The tenants lost the enjoyment of their home as people were coming and going and that glue from the roofing has caused odor problems.

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.

Residential Tenancy Branch policy suggests that an arbitrator may award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the tenants.

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.*

There was no dispute that at the start of the tenancy several repairs were agreed upon. From the evidence before me the landlord has now replaced the roof; satisfying that observation made at the start of the tenancy. However; the pocket door was not repaired, the heater in the basement was left for the tenants to repair and remains inoperable and the downspout has yet to be installed.

Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference*

There was no dispute that from October 8 until early December 2014; a period of approximately 8 weeks, the tenants did not have full use of the lower level of the rental unit. This separate suite was meant to be for the tenant's use, but the flood disrupted that use. There was no submission that the landlord or restoration company somehow delayed repairs; however they did take a significant period of time to complete those repairs.

There was no evidence before me that the tenants made any complaints during the time of repair, in an attempt to mitigate the claim they have now made related to loss of use and any disruption. The only request was that related to repairs, given to the landlord on November 10, 2014.

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.*

If calls were placed to the landlord the tenants could not provide the dates of any made. As set out in section 7 of the Act; a party making a claim must what they can to minimize a claim. An applicant cannot sit back and allow a claim to grow.

The parties did agree that compensation, for the loss of use in November and December, 2014 would be paid and the tenants accepted a total of $250.00.

From the evidence before me, I find, on the balance of probabilities that by accepting the payment from the landlord, the tenants were provided with an agreed-upon amount of compensation for any loss of quiet enjoyment caused by the restoration work and that all matters related to the restoration have been satisfied. I do not find that these payments were in relation to other repairs that had been requested on November 10, 2014.

In relation to the specific repairs requested by the tenants I find that the pocket door in the bathroom and heater are items the landlord could have easily repaired. There was no evidence before that the bathroom was not useable during the restoration. In the absence of a working door and heater in the bathroom I find that the tenants are entitled to nominal compensation in the sum of $10.00 from a reasonable period flowing November 10, 2014.

In relation to the remaining requests for repair made on November 10, 2014; I find that the majority of those repairs were not required as the result of health or safety concerns. The tenants provided no evidence that the state of the driveway posed a safety hazard and the fact that their young child tripped cannot be found, on the balance of probabilities, to have been the sole result of the state of the driveway.

The tenants made no effort to clean the small of amount of mold they could see in the unit. Without some attempt to mitigate a claim related to mold I find that mold did not cause any loss to the tenants. The tenants provided no evidence verifying the risk the mold presented, any health issues that could be linked to mold or loss of income.

There was no evidence before me that the absence of gutters was anything more than an annoyance to the tenants. The tenants were free to tell their children not to enter the area below the 1 gutter that was missing.

I find that housing standards would dictate that:

- the bathroom be painted within a reasonable period of time after November 10, 2014;
- that the dryer duct work should have been cleaned after notice was given on November 10, 2014;
- that proper notice of entry be given to allow the plumber to repair the acknowledged hammering sound; and
- the fan in the bathroom be repaired (it was in the bathroom and should have functioned).

Therefore, in relation to these items I find that the tenants are entitled to nominal compensation in the sum of $35.00. There was no evidence before me of any increased hydro costs related to the dryer but I have considered the general loss of value of the tenancy as a result of repairs not having been completed. I find that the landlord failed to diligently pursue these repairs and that the restoration work had already been completed; thus leaving the landlord free to focus on other repairs.

The balance of the claim is dismissed.

As the tenant's application has some merit I find the tenants are entitled to recover the $50.00 filing fee from the landlord.

Based on these determinations I grant the tenants a monetary Order in the sum of $105.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to nominal compensation in the sum of $105.00; the balance of the claim is dismissed.

This decision is final and binding 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: January 23, 2015

Residential Tenancy Branch