



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, LAT, RR, FF

Introduction

This was a hearing with respect to the tenants' application for repair orders and a monetary award. The hearing was conducted by conference call. The tenants and the landlord called in and participated in the hearing. The tenants and the landlord exchanged documentary evidence prior to the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?
Should the landlord be directed to make repairs to the rental unit?
Should the tenants be granted a rent reduction?
Should the tenants be authorized to change the locks?

Background and Evidence

Rental unit is a two bedroom basement suite. The landlord lives in the upstairs portion of the house. The tenancy began in February, 2012. There have been a series of dispute resolution proceedings concerning this tenancy and one earlier decision in particular dealt with repair issues raised by the tenants. In a decision dated August 13, 2014, Arbitrator K. addressed, among other matters, the tenants' claim for a repair order and for an order allowing the tenants to change the locks on the rental unit.

In the August 13, 2014 decision Arbitrator K. made the following determination:

Should a repair order be made and, if so, on what terms?

The landlord admitted that further repairs are required to the wall in the wine room. The landlord is ordered to have all of the water damage in this wall remediated by a qualified contractor. I recognize that contractors may be busy at this time of year and it may take a little while before a suitable contractor is able to

start work. If work has not commenced by December 1, 2014, the tenants may apply to the Residential Tenancy Branch for a further order.

In the application before me the tenants claimed that the following matters described as necessary repairs needed to be performed:

1. Kitchen sink. The kitchen sink faucet is loose and wobbly. It leaks and needs to be fixed.
2. The kitchen wall, also part of what the tenants described as the wine room wall is water damaged and the wooden studs in the wall are rotten and disintegrating. The tenants claim that the drywall needs to be removed and the 2X4 studs replaced before the drywall is restored and repainted.
3. The bathroom. There is moisture damaged paint and drywall in specific area of approximately two square feet. The drywall must be replaced and repainted.
4. There is a carpet bubble that has existed since the tenancy began. The tenants said that it has grown and constitutes a tripping hazard; the said the carpet needs to be re-stretched.
5. The tenants testified that the landlord's washer and dryer are broken. The tenants replaced them with their own washer and dryer, but they now want the landlord to repair or replace her own washer and dryer and return them to service so the tenants can remove the machines that they have supplied. In the alternative they want to be paid for the cost of the machines they purchased.

The tenants claimed that the landlord failed to abide by the decision quoted above and carry out repairs within the time prescribed. Specifically the tenants claimed that the so called "wine room" wall has not been repaired. The tenants said in their written submissions that they have been:

deprived half the area of the rented unit since May, 2014. Deprived areas include wine room, music room, kitchen area and bathroom. It is clear (name of landlord) has been frivolous.

We are seeking 1/2 months rent since May 2014. We have been paying \$2350.00 per month. \$1175.00 x 8 months is \$9400.

We are also seeking reimbursement of light bulbs purchased by tenants for \$65.29.

We are also seeking reimbursement for a washer and dryer that tenants had to purchase because (name of landlord) failed to fix broken ones for \$1,846.92.

Total compensation \$11,312.21 (reproduced as written)

The tenants and the landlord submitted volumes of material containing reciprocal accusations of objectionable behaviour and communications by the other party. I will not review or summarize this material because it is unrelated to the tenants' claims in this proceeding and these accusations are to be addressed in other dispute resolution proceedings.

The landlord responded to the tenants' repair requests. She disputed the arbitrator's findings in the August 13th decision that more work was required to the wall in the "wine room". The landlord said that the arbitrator's finding that she admitted further repairs were required was based on a misunderstanding of her evidence; the landlord said that she only commented that she would do more work in the future if it was necessary. She said that: "Right now the wine room wall is fine." The landlord submitted a statement from the contractor she hired to perform the original work. In a written statement dated January 4, 2015 he said in part as follows:

I showed (name of landlord) where a problem may cause water damage, and (name of landlord) didn't refuse me to do any job which I should do. Actually there was no additional work for me to do beyond the Work Agreement. I'm not only repaired the existing two holes on the wine cellar drywall and storage room ceiling which were cut by a plumber, but also removed and replaced any of the damaged studs and did remediation in the area. All damage had been fixed on the wine cellar wall and storage floor.

There was no further repairs are required to the wall in the wine room. Wine cellar, storage room, kitchen and bathroom are in good condition after my work done.

Analysis

The tenants testified at the hearing that the kitchen sink faucet is loose and wobbly and needs to be repaired. This was not a repair issue raised in earlier proceedings. I was not provided with evidence that the tenants have made a written request for this repair, but I accept the evidence presented that the faucet needs to be fixed. I therefore direct the landlord to have a technician attend to inspect and repair the kitchen faucet.

The tenants referred to the August 13th Arbitrator's decision; they say that the landlord has not carried out the ordered repairs. The landlord said that the arbitrator misunderstood her. She provided a statement from her contractor to support her

position that all need repairs have been done. In the August 13th decision the arbitrator recorded the following findings of fact:

On May 30 the contractor, the landlord, the tenants, and the Roto Rooter service man met at the rental unit. They discussed the upcoming visit by the insurance adjuster.

They also discussed the condition of the wall in the wine room. This wall is a continuation of the same water damaged wall in the kitchen and bathroom. The contractor demonstrated that the studs were completely rotten as a result of water damage.

In her testimony the landlord acknowledged that the contractor showed her where there was a problem with water damage. She refused to authorize any additional work so the contractor only repaired the existing holes in the drywall; he did not remove and replace any of the damaged studs or do any remediation in this area. The landlord testified that she is going to get this fixed after the tenants are evicted.

The landlord is now disputing those findings, but based on the August decision, it appears that the landlord is attempting to avoid performing the ordered repairs. It has already been determined in the August 13th decision that the repairs are required. The time set for starting the work has passed and I therefore grant the tenants a rent reduction of \$200.00 per month beginning March 1, 2015 and continuing until such time as the landlord has had all of the water damage in the "wine room" wall remediated by a qualified contractor. The landlord is reminded that she must obey the August 13th order and the rent reduction will continue until she has complied with the order to make the wall repair. If the parties do not agree about the completion of the work, the landlord will be at liberty to make an application for dispute resolution for an order ending the rent reduction and provide evidence from a contractor that necessary work has been performed.

The tenants have complained about a small section of moisture damaged wall in the bathroom. According to the landlord the bathroom in the rental unit is small and moisture will build up after a shower. I am not satisfied that there is a need for the repairs requested by the tenants, including the replacement of a section of drywall. I decline to order the landlord to make repairs, but I direct the landlord to have the contractor hired to perform the wall repairs to inspect the bathroom and advise the landlord and the tenants whether or not he considers that repairs to the bathroom are required.

The tenants complained about a carpet bubble, referring to a section of stretched carpet that has existed since the tenancy began. I do not consider the stretched, or ballooned carpet to be a matter that significantly affects the tenants' use and enjoyment of the rental unit. This was a pre-existing defect of which the tenants have been aware since the inception of the tenancy and I decline to order the landlord to repair the carpet.

The tenants requested reimbursement for a washer and dryer they purchased. They claimed the landlord failed to fix broken ones and they asked for payment of \$1,846.92 or for an order requiring the landlord to repair or replace her washer and dryer. The washer and dryer were discussed in an earlier dispute resolution proceeding. In a January 3, 2014 decision by Arbitrator K. with respect to an application by the tenants, she found that the tenants purchased their own washer and dryer after the landlord's washer broke and that they did so without providing the landlord with a reasonable opportunity to rectify the problem. In the January 2014 decision she said that:

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.

I find that the tenants' claim with respect to the washer and dryer has been dealt with in an earlier decision. The tenants may not re-litigate this matter and their claim with respect to the washer and dryer is dismissed without leave to reapply.

The tenants claimed compensation for the cost of replacement light bulbs. Light bulbs are consumables and the policy guideline with respect to responsibility for residential premises plainly states that the tenants are responsible for replacing light bulbs in the rental unit during the tenancy. The tenant's claim for the cost of replacement light bulbs is dismissed without leave to reapply.

The tenants claimed reimbursement of half the rent paid since May, 2014 in the amount of \$9,400.00. This claim is apparently based on their contention that they have been deprived of the use of the “wine room”, music room, kitchen area and bathroom over that period. The tenants have made claims in past proceedings for loss of use and loss of quiet enjoyment. In the August 13, 2104 decision their claim for damages for loss of quiet enjoyment was dismissed. In the application before me I find that the tenants have not shown that they have suffered any significant loss of use of the rental unit. I find any portion of their claim before the August 13th decision has already been dealt with and is *res judicata*. I do not find that there is evidence of any significant loss of use from August, 2014 onwards. The tenants’ claim for a monetary award for loss of use is without merit and it is dismissed without leave to reapply.

The tenants applied for an order authorizing them to change the locks to the rental unit. Apart from evidence of a hostile relationship between the parties that can only be described as toxic, I was not provided with evidence to justify an order authorizing the locks to be changed. The tenants have made the same request in a previous application. In her August 13, 2014 decision Arbitrator K said:

Should an order be made allowing the tenants to change the locks on the rental unit?

The only solid evidence of any entry into the unit by the landlord is during the construction period. During this period most of the unit was blocked off by plastic walls; the tenants were not in residence; and the landlord had an obligation to oversee the contractor’s work. The landlord could have met the technical requirements of the legislation by giving the tenants one blanket notice covering the entire period of the renovation. Now that the renovations are complete I am not satisfied that the landlord is likely to enter the unit except as authorized by law. Accordingly, no order further limiting the landlord’s right of entry or allowing the tenants to change the locks will be made.

The tenants have accused the landlord of making threats, but there is no new evidence that the landlord has entered the rental unit without notice. The ongoing hostilities between the parties are the subject of other proceedings. On the evidence before me I do not find that there are grounds to authorize the tenants to change the locks and I deny this request. Of course this request may be renewed if new grounds emerge.

Conclusion

I have confirmed in this decision that the landlord is obliged to perform the repairs as directed in the August 13, 2014 decision. I have granted the tenants a rent reduction of \$200.00 per month commencing March 1, 2015 and continuing for each subsequent month until such time as the landlord has had all of the water damage in the “wine room” wall remediated by a qualified contractor.

I have ordered the landlord to have the loose or wobbly kitchen faucet repaired. This must be done by the end of March.

I have directed the landlord to have her contractor inspect the bathroom for water damaged drywall and repair as required when he attends to carry out the ordered repairs to the wall.

The tenants request for permission to change the locks has been denied.

The remainder of the tenants` claims have been dismissed without leave to reapply. The tenants have been partially successful on this application. They are entitled to recover \$50.00 of the \$100.00 filing fee paid for this application. They may deduct the sum of \$50.00 from the next instalment of rent due to the landlord, in addition to the ordered rent reduction of \$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: February 13, 2015

Residential Tenancy Branch

