



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cornerstone Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an application by the tenants for orders compelling the landlords to comply with the Act, regulation or tenancy agreement and to make repairs to the rental unit; allowing the tenants to reduce the rent for repairs, services or facilities agreed upon but not provided; and for a monetary order. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Should a monetary order be made in favour of the tenants and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?

Background and Evidence

This one year fixed term tenancy commenced May 1, 2014. The monthly rent of \$1450.00 is due on the first day of the month. The tenants are also responsible for the utilities. There is a written tenancy agreement but neither party filed a copy of it in evidence.

A move-in inspection was conducted with the female tenant only and a move-in condition inspection report completed. A copy of the report was not filed in evidence by either party.

The rental unit is a two bedroom/two bathroom suite in a high rise building. The landlord testified that the building is fifteen years old and has double paned windows. The rental unit is about 875 square feet in size and is on the fifth floor. The unit has electric heat with baseboard heaters in the bedrooms, bathrooms and living room. The unit has nine foot ceilings and floor-to-ceiling windows in the living room. The flooring in the living room is hardwood laminate.

The landlord testified that there were only two tenants in this unit from 2007 to the start of this tenancy.

Storage Space

The tenants say they were promised that the unit had a storage space and this was one of the features that led them to rent this unit.

The landlord testified that when he showed the female tenant the unit he told her that most units in the building have storage units but he was having trouble finding this one. He subsequently found out from the strata that this particular unit did not have an assigned storage locker. He said he confirmed the situation with the female tenant before they moved in. The landlord also testified that the tenancy agreement indicates that a parking stall is included in the rent but storage is not included.

The tenant referred to the e-mails filed in evidence. The relevant e-mail is dated May 6 from the female tenant to the landlord: "Also we need to know the situation with the storage space. You told us there was one and we need a place for Ben's tools."

Leaking Roof

This unit has a stacking washer/dryer in a closet near the entrance. The tenant testified that about a half hour after they finish the laundry condensation forms on the exposed concrete ceiling in the living room and drips. The dripping lasts for about twelve hours and they have to mop it up. The tenants do laundry once or twice a week.

The landlord testified that when the tenants let him know about this problem he consulted with his maintenance person who advised that the issue must be the dryer vent. Any maintenance or repair to the dryer vent must be done by the strata.

The landlord said he put the tenants in touch with the strata. The strata advised everyone that the vent, which must be cleaned from the inside and the outside to be effective, was not cleaned the previous year because the previous tenants had not allowed entry to the unit.

The tenant says the landlord should have posted notice of entry and ensured that the vent was cleaned.

The landlord says that the strata had a company clean the vent from the inside. When the tenants reported that the situation still existed, he again contacted the strata. The landlord testified that the cleaning company returned to the rental unit four more times.

The tenant testified that the company came to the unit three times and told him they had to clean it from the outside.

The landlord testified that cleaning company did rent a bosun's chair and examined the vent from the outside. They reported that the issue is more than just a missed cleaning.

A design flaw of this particular building is that the dryer vents are enclosed in concrete which make any repair very difficult and expensive. When the vent for this unit was being installed the metal vent was crimped, which make proper cleaning impossible.

The strata is going to have a fire-rated bulkhead constructed. The bulkhead will house a new vent for the dryer, which will vent the hot air outside. The strata is going to pay for this modification and the work is scheduled for the next week or two. The tenant expressed the opinion that this modification will probably solve the issue.

Fireplace

There is an electric fireplace in the living room of this unit.

The landlord testified that during the move-in inspection he told the female tenant that he did not know if the fireplace worked or not, or if a replacement remote was available. He made inquiries and was advised by the strata manager that a replacement remote was not available for this fireplace.

When the temperature dropped outside the tenants say they found the living room to be very cold. The tenant testified that the bedrooms and bathrooms are comfortable but that the size of the baseboard heater in the living room is half the length of the units in the baseboard heaters in the bedrooms and it is not able to keep up. The tenant says that when it gets cold ice forms on the living room windows and then subsequently melts, leaving water on the floor. The tenants feel that the fireplace is an essential part of the heating system for this area of the apartment.

The tenant testified that they complained frequently to the landlord but got no response. The e-mail they filed in evidence is dated December 12.

The landlord testified that the fireplace had only been a decorative element for years. He testified that he had been in this unit in previous winters and the unit was comfortable, although he had not been in the unit this winter. This is the first year he has ever received a complaint about the temperature in this unit.

The landlord testified that he first heard about the fireplace in November. He had an electrician attend at the unit. The electrician called him from the unit and advised that the baseboard heaters were the main source of heat for this unit. The electrician also advised that because of its age, repair of the fireplace was not practical. This information was provided to the tenants in an e-mail dated December 12.

This application for dispute resolution was filed on January 6, 2015.

The landlord testified that because the fireplace is built-in with a mantel and a tile surround, replacement is quite expensive. However, the owners of the unit have instructed him to obtain quotes for its replacement. The tenant expressed doubt about the cost of repairs saying there are only eight tiles around the fireplace.

The landlord testified that when determining the size of the baseboard heaters to be installed in any unit, electricians do not include an electric fireplace in the calculation of BTUs required for each space.

Analysis

Law to Be Applied

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 claimant must also show the efforts they have made to minimize the damage or loss experienced, as required by section 7 of the *Residential Tenancy Act*.

This is a claim in contract by the tenants against the landlord. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Storage Locker

The tenants' evidence on this portion of the claim is minimal. The two pieces of evidence that would have been most helpful are the tenancy agreement – to determine whether storage was included in the services and facilities included in the rent; and the evidence of the female tenant to hear about her conversations with the landlord.

I find that the tenants have not established, on a balance of probabilities, that the rent does include a storage locker.

Dripping Ceiling

It is clear that a problem has existed throughout this tenancy. On the range of repairs that may be required to a rental unit dripping caused by condensation once or twice a week is on the less serious side of the continuum, however, it does represent a reduction in the value of the tenancy agreement. I award the tenants the sum of \$200.00 (calculated at \$25.00/month for 8months) for this item.

Based upon the landlord's testimony that this situation should be remedied by February no repair order will be made at this time. If the work is not completed as promised by the landlord or does not resolve the condensation issue the tenants have leave to re-apply for such further order as may be appropriate.

Fireplace

Usual when tenants apply for compensation for lack of heat they file evidence such as information about the actual temperature in the unit, some technical information about the adequacy of the heaters in the unit, their own efforts to mitigate the situation (e.g. using space heater), or statements from visitors about their experience in the rental unit. In this case, the only documentary evidence is one e-mail complaining about the temperature.

On the other hand when a tenant rents a unit with a fireplace they expect that it will work, if only for ornamental purposes. The landlord evidence was not that he told the tenants that the fireplace did not work but that he would see if it did and whether he could obtain a replacement remote. This type of statement would have given the tenants an expectation that the fireplace would work. He also testified that this conversation took place during the move-in inspection, which would be after the tenants had agreed to rent the unit and had signed the tenancy agreement. This is after the point that such a disclosure should have been made.

I find that the value of the tenancy agreement is reduced because the fireplace does not work and I award the tenants \$200.00 for this item (calculated at \$25.00/month for 8 months). This award does not include any compensation for lack of heat, as I find that the tenants did not establish, on a balance of probabilities, that the unit did not have sufficient heat.

No award for reduction in future rent is made at this time based upon the landlord's evidence that the owners are looking at replacing the fireplace and the lack of certainty as to whether this tenancy will continue past the one year term. If this situation continues to be an issue, the tenants have leave to re-apply for such order as may be appropriate.

Filing Fee

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

Conclusion

I find that the tenants have established a total monetary claim of \$450.00 as detailed 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: February 24, 2015

Residential Tenancy Branch

