Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord was represented by counsel.

Preliminary Issue – Service

The landlord admitted service of the tenants' dispute resolution package.

The tenants admitted receipt of the landlord's evidence; however, the tenants were unable to view the landlord's digital evidence.

Digital evidence is subject to rule 3.10 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Rule 3.10 of the Rules requires that a party that wishes to rely on digital evidence must provide the other party with at least seven days with full access to the materials. Rule 3.10 also requires the serving party to confirm that the

responding party can access the digital evidence. Where a party cannot access the digital evidence an arbitrator may exclude it.

The tenant AJ testified that the tenants could not access the landlord's digital files on either the tenant AJ's computer or the tenants' DVD player. The digital evidence is in respect of the landlord's attempt to enter the rental unit on 13 December 2015.

As the tenants were unable to access the digital evidence, and as the digital evidence is of tangential relevance to the tenants' application, I declined to admit this evidence. The parties were informed of this decision at the hearing.

Preliminary Issue – Scope of Application

The tenants filed an amendment to their application on or about 22 January 2016. The amendment did not set out any new remedy that the tenants sought. The amendment merely provided additional details of events that occurred after the original application. I find that the "amendment" is not an amendment to the tenants' application, but is accepted as further details of the dispute.

A 1 Month Notice to End Tenancy for Cause has been issued. There is no application to cancel that notice before me.

Serious allegations regarding harassment and the landlord's motives were raised at the hearing. These allegations are not within the scope of this application and I have not considered them.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for compensation for damage or loss under the Act, regulation or tenancy agreement? Are the tenants entitled to an order that the landlord make repairs to the rental unit? Are the tenants entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 1 September 2015. Monthly rent of $1,750.00 is due on the first. The landlord continues to hold the tenants' security deposit in the amount of $875.00. The parties informed me that the tenants were vacating the rental unit on 29 February 2016.

The tenants complain of the following deficiencies:

- the dining room light fixture is not attached to the ceiling;
- various lightbulbs were not functioning;
- the garburator cover was missing;
- the landlord failed to deliver a second mail key;
- the rental unit, including the carpet and kitchen appliances, was not clean;
- the bathtub stopper was not attached;
- the fan in the bathroom was constantly running; and
- the front door was difficult to close.

The tenant NJ testified that various deficiencies were noted in the condition move in inspection report created 28 August 2015. The tenant AJ testified that the rental unit was not clean and that both he and his mother (the tenant NJ) spent time cleaning. The tenant AJ testified that a manure smell was present in the rental unit. The tenants submitted that the rental unit was not as promised. The landlord testified that he hired a professional cleaning service to clean the rental unit. The landlord testified that he had no knowledge that the cleaning was not satisfactory.

The landlord testified that he mailed the missing garburator cover to the tenants.

The tenant NJ testified that some of the missing the bulbs were specialty bulbs. The tenant NJ testified that some of the bulbs have been replaced but that the bulbs in the kitchen are not yet replaced. The tenants admitted that there were other light working lightbulbs in the fixtures that also had burned out bulbs. The landlord testified that he replaced the standard type bulbs, but that he required more information for the specialty bulbs.

The tenant NJ testified that she was not capable of closing the front door. The tenant NJ testified that her son (tenant AJ) had to close the door for the tenant NJ by lifting the door and pulling it closed.

The tenant NJ testified that the bathroom fan was constantly running. The tenant testified that the fan issue was remedied in early November. The landlord testified that

there is an on/off switch in the master bedroom for this fan. The landlord testified that it was always available to the tenants to turn off the fan.

The tenant NJ testified that the dining room light was hanging down and would swing when planes flew overhead. The landlord testified that this deficiency is cosmetic and is not a safety concern. The landlord testified that the repair is a matter of replacing a screw.

The landlord's agent attempted to deliver a second mail key to the tenants; however, the tenants report that the key does not work for the mail.

The tenant AJ testified that he sent numerous emails to the landlord seeking repairs and detailing the scope of repairs. The tenant AJ testified that the landlord would not attend to complete the repairs but would send manuals. The tenant AJ testified that he sent a letter to the landlord in early October regarding the repairs. The landlord did not recall receiving that letter. There is no correspondence from this date in evidence.

On or about 1 November 2015, the landlord received a letter from the tenants detailing the repair demands. The landlord testified that this was the first time the tenants informed the landlord of the deficiencies. I was not provided with a copy of this letter. The landlord wrote to the tenant AJ by email seeking more details on the deficiencies. The tenant AJ provided further details on 5 November 2015.

On 14 November 2015 the tenants wrote to the landlord setting out the repair demands.

On 19 November 2015 a locksmith attended at the rental unit to repair the front door.

The landlord provided notice that he would attend at the rental unit on 27 November 2015. The landlord's flight was delayed and he was unable to attend. The landlord did not alert the tenants that he would not be able to attend.

The landlord provided notice to enter the rental unit on 13 December 2015. The tenants wrote to the landlord to ask to reschedule. The landlord informed the tenants that this time was the only time the landlord could attend at the rental unit. On 13 December 2015, the landlord attended at the rental unit. The tenant refused the landlord access. There was an incident when the landlord attempted to use his key to enter. Police attended. The landlord was unable to enter that day.

The landlord submits that the tenants had an obligation to inform the landlord of the deficiencies in the rental unit prior 1 November 2015 and in a timely fashion. The

landlord submitted that he is not obliged to require a second mail key to the tenants. The landlord submitted that he dealt with the priority issues diligently; in particular, the front door was repaired by 19 November 2015. The landlord submitted that it is not the landlord's obligation to train the tenants how to use various appliances in the rental unit. The landlord submitted that the 27 November 2015 was not concrete and was dependant on his travel plans.

I was provided with correspondence between the parties:

> I was provided with an email dated 1 November 2015 from the landlord. The email sets out that the landlord has sent the garburator cover to the tenants.
>
> I was provided with an email dated 5 November 2015 from the tenant AJ. The email sets out that the tenants are having an ongoing issue with the door and that the mail box key was not the correct key.
>
> I was provided with an undated letter from the tenant NJ to the landlord. The letters sets out that it is the landlord's final notice to fix the deficiencies by 19 November 2015.

The tenants valued their loss at $20.00 per day. The tenants based this valuation on the difficulties the door had on the tenant NJ leaving the rental unit. The tenants claim for $1,820.00:

Item	**Amount**
September Loss	$600.00
October Loss	620.00
November Loss	600.00
Total Monetary Order Sought	**$1,820.00**

Analysis

The tenants seek compensation for the following deficiencies:

- the dining room light fixture is not attached to the ceiling;
- various lightbulbs were not functioning;
- the garburator cover was missing;
- the landlord failed to deliver a second mail key;
- the rental unit, including the carpet and kitchen appliances, was not clean;
- the bathtub stopper was not attached;
- the fan in the bathroom was constantly running; and

- the front door was difficult to close.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant. At the beginning of the tenancy a landlord is expected to provide a clean rental unit in a reasonable state of repair.

Residential Tenancy Policy Guideline "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) elaborates on the landlord's responsibility:

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property.

Specifically Guideline 1 establishes that a landlord is responsible for making sure all light bulbs and fuses are working when the tenant moves in. Guideline 1 sets out that a landlord must provide each tenant with a mailbox key.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer.

On the basis of the evidence before me, I find that the deficiency with the dining room light fixture was no more than a simple cosmetic issue. I find that this deficiency is so trifling that it does not constitute a compensable breach of the landlord's obligations pursuant to subsection 32(1) of the Act.

The landlord had an obligation to provide functioning lightbulbs at the beginning of the tenancy. The landlord did not. The landlord has breached subsection 32(1) of the Act. On the basis of the evidence, I find that at all material times the tenants had sufficient lighting in the affected areas of the rental unit. On this basis, I find that the tenants did not have any resulting damage or loss from the landlord's breach of the Act.

The landlord sent the garburator cover by mail very shortly after receiving the complaint from the tenants that the cover was missing. The landlord complied with the Act by remedying the deficiency as soon as practicable.

On the basis of the evidence before me, I find that the landlord did not provide each tenant with a mail key as required by Guideline 1; however, at all material times, the tenants had one working copy of the mail key. While it may have been inconvenient to share one mail key, that inconvenience is trifling and, while a breach of the Act, is not compensable.

Deficiencies in the cleanliness of the rental unit were noted on the condition inspection report. The landlord arranged for cleaners to attend to remedy the complaints. The tenants' further complaints regarding the cleanliness of the unit at the beginning of the tenancy did not arise until after the relationship between the parties began to deteriorate. The tenants did not provide any photographs of the alleged cleanliness deficiencies. On this basis, I find on a balance of probabilities, that the tenants have failed to show that the condition of the rental unit failed to comply with the standards of cleanliness required. The tenants have not shown a breach of the Act.

The bathtub stopper was not connected to the bathtub itself. The tenants did not provide any evidence to show that the disconnection prevented the tenants from using the bathtub. On this basis, I find that the tenants did not prove that they experienced any damage or loss from the disconnected bathtub connection.

The landlord testified that the running fan was because of the tenants' failure to program the humidity controls to their preferences. The landlord testified that at all times the humidity controls were functional. The tenants did not provide any evidence to contradict this position. While it may be prudent to provide tenants with instructions on the proper operation of appliances, the landlord does not have any obligation to instruct tenants how to use appliances. On this basis, I find that the landlord did not breach the Act.

The best evidence indicates that the first time the tenants explained the issues with the door was in their email of 5 November 2015. The email did not set out that the issue was preventing them from leaving the unit, but rather expressed that it was inconvenient. The landlord had someone attend at the rental unit to fix the door by 19 November 2015. I find that the landlord attended promptly to the issue and in doing so has not breached the Act.

In this case the tenants' loss, if any, was *de minimus*. Tenants' reaction was disproportionate to the actual deficiencies. This entire application would have likely been avoided had the parties continued to engage in clear communication, not escalated the matter, and worked with each other to fix the issues.

As the tenants are not entitled to compensation for breaches of the Act by the landlord, I will not order any rent abatement as no entitlement has been shown.

The tenants have proven various non-compensable breaches of subsection 32(1) of the act; however, as the tenancy ended 29 February 2016, I decline to make any orders for repairs.

As the tenants have been unsuccessful in their application, they are not entitled to recover their filing fee from the landlord.

Conclusion

The tenant's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 04, 2016

Residential Tenancy Branch