



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, FF, O

Introduction

This hearing dealt with an application by the tenants for a repair order and an order allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and gave affirmed testimony.

The landlord had filed 15 pages of on-time evidence. She stated that she had left the package at the rental unit on July 7. The evidence package included a note from a witness confirming service on that date. The tenant said she did not receive the evidence package but wanted to proceed with the hearing anyway.

I accepted the landlord's evidence that she had served her evidence package on the tenants in a manner permitted by the legislation. In addition, most of her evidence consisted of same e-mails the tenants had submitted in their evidence package.

Issue(s) to be Decided

- Should a repair order be made and, if so, on what terms?
- Should an order reducing the rent be made and, if so, in what amount?

Background and Evidence

The Tenancy

This two-year fixed term tenancy commenced September 15, 2014. Although there has been some controversy regarding a rent increase the end result has been that the tenants have paid a monthly rent in the amount of \$1300.00. The rent is due on the first day of the month. A copy of the tenancy agreement was not filed in evidence by either party.

A move-in inspection was conducted and a move-in condition inspection report completed on September 14, 2014. A copy of the report was filed in evidence. A number of deficiencies were noted on the report including the note that the tenants would fix all the holes and repaint the entire house and the landlord would pay for the

paint up to \$250.00. The parties both testified that this was done. The tenant also agreed that the other deficiencies noted on the Condition Inspection Report were rectified.

On May 1, 2016 the landlord advised the tenants that she intend to either sell the property or move back into it at some point after the expiry of the fixed term. She offered the tenants a month-to-month tenancy at a higher monthly rent. She also asked if the tenants were interested in purchasing the property.

On May 9 the tenants responded by stating that the proposed rent was illegal and demanding that the landlord fix four items within two weeks.

On May 15 the landlord advised the tenants that she had decided to sell the property. She has since sold the property with a possession date after the end of the fixed term. The landlord testified that the purchasers have asked for vacant possession and she has served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use. The tenants have disputed the notice and the hearing of that application for dispute resolution is set for early September.

Water Softener

On the night of March 14, 2016, there was a water leak in the basement. The landlord had a plumber attend the next day. He bypassed the water softener and took it out of service. The tenant testified that without the water softener the minerals in the well water are leaving deposits on the dishes and the laundry. She testified that they had refilled the water softener with salt monthly. She also testified that the water softener is 20 to 30 years old and needs to be replaced.

The landlord submitted an e-mail from the plumber which stated:

"The water softener was bypassed and taken out of service. It appeared as though it had not been in service for some time anyway because of the absence of salt in the brine tank (it was full of water). There was water on the floor because of the leak. We sent you an estimate for a replacement water softener but no water hardness test was done is it was unclear whether a softener is actually needed. Typically on Vancouver Island well water is soft however in certain areas people can benefit from a water softener. Benefits include reduced mineral staining in fixtures, more soap suds and better hydration of the skin."

The landlord testified that she installed the water softener in 2004 when she bought the property. She did so because the plumbers told her that the water softener would reduce wear on the copper plumbing.

The landlord also filed a water test dated 2, 2016, to show that the well water is safe for drinking.

Downstairs Bathroom

There are two bathrooms in this house; one upstairs and one down. Both parties testified that the ceiling in the downstairs bathroom is unfinished and that it has been in this condition since the start of the tenancy. Both agree that the condition of the ceiling is not noted on the Condition Inspection Report. The tenant says they had an oral agreement from the landlord to fix the ceiling; the landlord says she made no such promise. The tenant says an electrical wire above the shower poses a safety hazard; the landlord says the wire was an Internet connection and is disconnected.

Ants

The parties agree that the home is located in a heavily wooded area.

The tenants say there are always ants in the rental unit. When asked she said they have found piles of sawdust. When asked, she also said some are large and others are smaller. The tenant testified that the ant traps have been ineffective.

The landlord said she had inspected the unit and did not find any nests. She suggests that if the nests are outside the home an exterminator will be unable to do anything.

Living Room Floor

The tenant the living room floor was installed over a previously sunken living room, She says that when you walk across the living room floor it "flexes" or "bounces". They want the floor fixed because they are afraid of it breaking.

The landlord says nothing in the living room has been changed since she bought the house in 2004. At that time she had the home inspected and that inspection confirmed that the home was built to Code. The purchasers just had the home inspected as part of their due diligence and no conditions were attached to the sale as a result of that inspection.

The landlord says the tenants first raised the issue in a conversation in January 2016. The landlord says the tenant have a solid wood, wall-to-wall, floor-to-ceiling cabinet in the living room. She has suggested to the tenants that the weight of this cabinet could be causing the floor to flex and has suggested to them that they attach it to the wall in the same manner as kitchen cabinets are attached to the wall.

The tenant says the cabinet is solid wood, was made in Europe, and is not heavy.

Analysis

Applicable Law

On an application such as this the onus is on the applicant, in this case the tenants, to prove their claim on a balance of probabilities.

Section 32(1) of the *Residential Tenancy Act* states that a landlord must provide and 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 a tenant.

It does not require a landlord to maintain a rental unit in a state of perfection.

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.

Section 7(2) requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss.

Water Softener

First of all, there is no evidence that a water softener is required to comply with the health, safety or housing regulations. Further, a water softener is not required to make the rental unit suitable for occupation by a tenant.

The question then is whether the water softener was a service or facility included in the rent. Without a copy of the tenancy agreement in evidence there is no proof that it was. If it was not, the tenants have no claim for a rent reduction.

Even if it was, I accept the plumber's statement that it did not appear that the water softener had been used by the tenants for some time. When a service is not used, the value of a tenancy agreement is not reduced when that service is discontinued.

Downstairs Bathroom

It is noteworthy that several other repairs were agreed upon and documented on the Move-In Condition Inspection Report and that the bathroom ceiling was not. This suggests that there was no agreement on this issue.

The only evidence that the landlord may or may not have agreed to install a ceiling in this bathroom is the contradictory oral testimony of the parties. There is nothing to tip the balance of probabilities in the tenants' favour.

There is no evidence, other than the tenants' opinion, that the current situation poses a safety hazard.

It is also significant that the tenants did not ask for this repair until 19 months into a 24 month term. This suggests that they were not very concerned about this issue. Further, the delay means they have not met the requirement of section 7(2) to minimize their damages.

Ants

As explained to the landlord in the hearing the evidence suggests the presence of carpenter ants. I know from personal experience that their nests are not easy to locate and that, if left unchecked, carpenter ants can cause substantial damage to a home.

I order the landlord to have the rental unit inspected by a qualified pest control company within four weeks of receiving this order and to provide a copy of their inspection report to the tenants.

If the landlord fails to comply with this order or to implement the recommendations of the pest control company, if any, within a reasonable period of time, the tenants may apply for a further order. No rent reduction is granted at this time as the issue has only been recently raised by the tenants and there is no evidence that the ants have caused a reduction in the value of the tenancy.

Living Room Floor

The fact that the tenants waited so long to raise this issue with the landlord again suggests that the tenants were not that concerned about it. Further, they have provided no evidence, other than their opinion, that this situation poses a safety hazard.

Conclusion

- a. The landlord has been ordered to have the rental unit inspected by a qualified pest control company within four weeks of receiving this order and to provide a copy of their inspection report to the tenants.
- b. All other claims by the tenants are dismissed, for the reasons set out above.

- c. As the tenants have been partially successful on their application I order that they are entitled to partial reimbursement - \$50.00 - from the landlord of the fee they paid to file it. Pursuant to section 72(2) 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: July 29, 2016

Residential Tenancy Branch