



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RP, FF

Introduction

This hearing was convened as result of an application by the Tenant for an Order that the Landlord make repairs to the rental unit, a dispute over a rent increase and the Tenant's request to recover the filing fee.

Both parties participated in the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlord be ordered to make repairs to the unit?
2. Is the Tenant entitled to dispute the rent increase?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified as to the terms of the tenancy as follows: the tenancy began October 15, 2013; monthly rent was payable in the amount of \$900.00 at the start of the tenancy; and the rent was increased to \$911.00 in the beginning of July 2015.

The Landlord issued a Notice of Rent Increase dated May 31, 2016 which was to come into effect on September 1, 2016 to \$937.00. The Tenant confirmed that she has been paying the increased rent since September 1, 2016. The Tenant disputes this rent increase as she believes the Landlord has not attended to required repairs.

The Tenant seeks an Order that the Landlord make repairs to the rental unit. In this regard, the Tenant testified that she noticed that the kitchen sink was leaking in approximately November or December of 2015. She stated that she first told the Landlord about the kitchen faucet leaking in December of 2015 and that every time she paid the rent she reminded him about this issue.

The Tenant stated that the faucet is now fixed but this wasn't done until May 24, 2016 over six months after she discovered the problem. She stated that the plumber took the faucet away and put a new washer in it. She said that because of the water damage, the section under the faucet fell out. The Tenant provided in evidence photos of the counter which depict the following: a photo of the counter which confirming that the piece under the faucet had fallen out; a photo taken from underneath the cabinet shows light coming through; and, a photo of the edge of the countertop from below and which shows tremendous rotting as a result of the leak. The Tenant also supplied photos of the faucet which showed the caulking coming off the faucet. The Tenant testified that this was the caulking that the plumber installed when the faucet was fixed. The Tenant stated that she can't clean the caulking as when she tries it comes off.

The Tenant stated that because of the missing piece of counter, the faucet is now loose and she has to be very careful with it whenever she uses the faucet. The Tenant also testified that the water drips below to the cabinet (which is unusable) and the area behind the faucet is now sinking as a result of the water damage.

The Tenant also submitted photos of the bath room sink and which shows the trim-board having coming off. The Tenant stated that this happened after she made her application and she confirmed that she has not specifically asked the Landlord to repair it.

The Tenant also sought an Order that the Landlord re-caulk the bathroom tiles in the bath surround. She confirmed that this is how the tiles were left after the Landlord repaired them. She also confirmed that she first began asking the Landlord to re-caulk the bathroom tiles in August of 2014 and the first repair was done in April 2015.

The Landlord testified that the rental unit "is an old place and needs some work". He stated that he was reluctant to start doing repairs, as he is worried that the age of the counters and cabinets are such that he fears that this may be a much larger job and may ultimately require vacant possession to properly repair them. He confirmed that the cabinets are the original cabinets from the 1960's. He also stated that he did not know the age of the countertop as it was in place when he purchased the property in 2002, but he was certain the countertop was not original.

The Landlord testified that the rent increase was halved in November 2015 to \$911.00 to assist the Tenant as she stated that she was unable to afford more.

The Landlord further testified that the handyman looked at the sink and fixed the leaking tap in March of 2016. He further stated that the countertop is still functional although it may not be perfect. He further stated that the countertop is 12 feet long and most countertops are 10 feet long such that this is a special order and consequently very expensive.

The Landlord then stated that the handyman was frustrated in his attempts to contact the Tenant. He stated that the Tenant does not work, yet did not accommodate the handyman's request to deal with these repairs.

In response to the Tenant's request to replace the countertop, the Landlord stated that he does not question whether the countertop needs to be replaced but it is just a matter of whether it is to be done on a piecemeal basis, or whether it is part of a larger full scale renovation.

The Landlord confirmed he could have the countertop replaced by December 25, 2016.

The Landlord also testified that the piece of the counter which fell out did so after the plumber repaired the faucet.

The Landlord also confirmed that the caulking in the bathroom tub was necessary but again he was concerned that by starting this project it may result in a full renovation resulting in a need for vacant possession.

The Landlord stated that the Tenant's claim that he has not attended to repairs is false. He stated that he has made repairs, but perhaps not to her timeline, but he is not sure why he is being held to her timeline.

The Landlord reiterated that the building is 60 years old. He further stated that the sink is not a health issue it is still functional and it is just a question of timing.

Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed on the Branch's website at: www.gov.bc.ca/landlordtenant.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
 - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under

the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

A landlord has the obligation to make repairs when a Tenant's request for repairs is to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards.

In the case before me, I find the Tenant has made such requests as it relates to the kitchen faucet and counter and the caulking between the tiles in the bathroom tub surround. The Tenant was clear that her requests were not made for aesthetic reasons only, but to ensure the faucet functioned reasonably. She further testified that she was worried about water getting between and behind the tub surround tiles such that further moisture issues and rotting would occur. Again, I find that the Tenant has made the requests to the Landlord to redo the caulking to ensure reasonable functioning of the bathtub surround and to prevent moisture issues and possible mold related health issues.

Residential Tenancy Policy Guideline #40 also addresses the useful life of building elements and indicates the useful life of the relevant elements as follows: 15 years for faucets; 25 years for counters; and 20 years for bathtubs and sinks.

I accept the Landlord's evidence that the counters are 14 years old. It is likely, had the leaking faucet been addressed when the Tenant first brought it to the Landlord's attention that the counter would not have rotted and fallen away. Based on the photographic evidence before me, I find the Tenant's claim for replacement of the counter is not unreasonable given the counter's age and current state. Similarly, I find her request for re-caulking of the bathtub tile surround to be reasonable.

Accordingly, pursuant to section 32 and 62(3) of the *Residential Tenancy Act*, I Order as follows:

1. By No later than December 10, 2016, the Landlord must:
 - a. Replace the kitchen counter in the rental unit;
 - b. Ensure the faucet no longer leaks, and if required, replace the faucet;
 - c. Re-caulk the tile in the bathroom tub surround.

2. Should the Landlord fail to make the repairs as set out in paragraph 1 above, the Tenant may reduce her monthly rental payments by \$75.00 per month.

The Tenant conceded that she did not formally ask the Landlord to reinstall the trim on the bathroom counter. As the Landlord was not given prior notice of this request, I decline the Tenant's request that I Order the Landlord to do so. I am hopeful that the Landlord will attend to this request without the need for a further application.

Having reviewed the Notice of Rent Increase, I find that it complies with Part 3 of the *Residential Tenancy Act*. Accordingly, the Tenant's application to dispute the rent increase is dismissed pursuant to section 43(2) of the *Act*.

The Tenant, having been substantially successful is entitled to recovery of the \$100.00 filing fee. She may reduce her next month's rent by \$100.00 as compensation for this amount.

Conclusion

The Tenant's application for an Order that the Landlord replace the kitchen counters, repair or replace the kitchen faucet and re-caulk the bathroom tile tub surround are granted.

The Landlord must complete the requested repairs by no later than December 10, 2016 failing which the Tenant may reduce her rent by \$75.00 per month until the repairs are completed.

The Tenant's request for an Order that the Landlord re-install the bathroom counter trim and her request to dispute the rent increase are dismissed.

The Tenant is entitled to recovery of the \$100.00 filing fee and may reduce her next month's rent by \$100.00 as compensation for this amount.

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: November 10, 2016

Residential Tenancy Branch

