



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, RR

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord complete repairs and a rent reduction.

The hearing was conducted via teleconference and was attended by one of the tenants and the landlord.

At the outset of the hearing the landlord submitted that the *Residential Tenancy Act* (Act) did not apply to this tenancy.

The landlord submitted a copy of a tenancy agreement signed by the tenant and the original owner of the property on April 1, 2011 for a 20 year fixed term tenancy beginning on April 1, 2011 for a monthly rent of \$2,150.00 due on the 1st of each month with no security deposit or pet damage deposit charged.

The landlord pointed out that the term in the tenancy agreement that speaks to the period and terms of the tenancy stipulates only that the fixed term ends on March 31, 2031. The landlord also pointed out that the agreement states if the agreement is for a fixed term the parties were required to complete another section choosing between two options for what will happen at the end of the fixed term.

The options provided are:

1. The tenancy will continue on a month to month basis or another fixed term unless the tenant gives notice to end the tenancy; and
2. At the end of the tenancy the tenant must vacate the rental unit.

Section 4 of the Act states the Act does not apply to, among other circumstances, living accommodation rented under a tenancy agreement that has a term longer than 20 years.

Section 44(3) states that if on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The landlord initially testified that because the *Act* allows for a fixed term tenancy to continue on a month to month basis than Section 4 of the *Act* excludes this tenancy from the *Act* because the tenancy will exceed 20 years.

In the alternative the landlord relied on Section 13 of the *Act* to contend that because neither of the above noted options was checked off the tenancy agreement is incomplete and therefore the agreement is not enforceable.

Section 13 outlines what must be in a tenancy agreement including the need to provide the agreed terms in respect of the following:

- The date on which the tenancy starts;
- If the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
- If the tenancy is a fixed term tenancy,
 - The date the tenancy ends, and
 - Whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date.

In regard to the landlord's claim that the *Act* does not apply because it will exceed 20 years, I refer to the specific wording of Section 4 of the *Act*. The Section exempts tenancies from the *Act* where the "living accommodation rented under a tenancy agreement that has a **term longer than 20 years**" [emphasis added].

In this case, in the absence of any specific clause in the tenancy agreement acknowledging what will happen at the end of the fixed term I concur with the landlord that Section 44 allows the tenancy to continue on a month to month basis. As such, on April 1, 2031, if the tenancy still endures the tenancy will convert to a month to month periodic tenancy.

If that occurs I find that the tenancy will have had a single term of 20 years in duration and then successive 1 month terms for each month following. While I do agree that it will become a *tenancy* of duration longer than 20 years, it will not become a tenancy with any *term* longer than 20 years.

As such, I conclude that Section 4 is not applicable in the case before me and the duration of the fixed term of the tenancy does not exclude this tenancy from the jurisdiction of the *Act*.

In regard to the landlord's assertion this tenancy is not governed by the *Act* because it is the parties did not complete all of the terms required under Section 13, I find that Section 44 contemplates that very situation and provides that when the above noted

options are not included in the tenancy agreement then the tenancy will continue on a month to month basis.

Based on all of the above, I find the tenancy falls within the jurisdiction of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order to have the landlord make repairs to the rental unit and to a rent reduction, pursuant to Sections 32 and 65 of the *Act*.

Background and Evidence

The parties agree that approximately 4 years the original owner of the property, the tenant's father, sold the property to the current owners. The tenant submits that from that time until the current owners hired the current agent to manage the property the owners would take care of any requests for repairs that the tenants submitted.

The tenant submitted that during the last year the landlord's agent has been refused to make any repairs requested and continuously threatens to end the tenancy constantly.

The tenant seeks the landlord to make the following repairs:

- The garburator causing the plumbing to back up;
- The dishwasher backs up into the sink;
- The hood fans turns off which causes the fire alarm to go off;
- The in floor heating in the 2nd bathroom;
- The chimney has not been cleaned for over 2 years; and
- The patio awning has leaks caused from outside construction work.

The landlord submitted that they are not responsible for the repairs to these particular appliances and other items because they are not listed in the tenancy agreement as being included in rent.

The tenant submitted that at the start of the tenancy the appliances were, to her knowledge included in the rental unit and she did not buy them nor were they given to her by the former landlord.

The parties agreed the landlord had not been informed about the problem with the patio awning until this hearing.

Analysis

Section 32(1) of the *Act* requires the 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 make it suitable for occupation by a tenant.

Based on the submissions of both parties and on a balance of probabilities, I find that is unlikely that the in-floor heating; built in dishwasher; the garburator; the kitchen exhaust hood fan or chimney belong to the tenant. I find it is completely implausible that it would be expected that the tenant would have the right to remove these items at the end of the tenancy.

Furthermore, I am not persuaded by the landlord's position that because the items are not noted in the tenancy agreement the landlord is not responsible for the maintenance of any of the items noted by the tenant that need repair. I am, however, satisfied that all of the repairs previously sought by the tenant are for items that were included in the original property and do not belong to the tenant.

As a result, **I order the landlord must**

- Have the in-floor heating; the garburator; the dishwasher; and the kitchen exhaust fan repaired immediately; and
- Have the chimney inspected and cleaned immediately.

In regard to the patio awning, I find that since this is a new request to the landlord that he be allowed time to inspect the damage and determine the need to repair. **If there is a need for repair I order the landlord must make such repairs, within a reasonable time.**

Section 65(1)(f) of the *Act* states that if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

As the landlord has refused to make these reasonable repairs for an extended period of time **I order the tenants are entitled to a rent reduction.** While the tenant submitted that the refusal to take action on these repairs since the current manager has taken over for the owner approximately 1 year ago, the tenant has provided no definitive proof of when the repairs were originally requested.

However, I find that since the tenants applied for this hearing in September 2016 and the landlord was clearly aware of the requests by the tenants for some time it would be reasonable to start the rent reduction effective July 1, 2016 to run until the landlord files an Application for Dispute Resolution and obtains an order from an Arbitrator that confirms the above ordered work is complete.

As to the quantum of the rent reduction, based on the nature of the repairs I find the decrease in the value of the tenancy would be 25% of the current rent or \$537.50. As

such, I find for the period between July 2016 and December 2016 the tenants are entitled to \$3,225.00 which they may deduct from future rent payments, adjusted for the applicable rent reduction for each subsequent month.

Conclusion

In summary, the landlord is ordered to make the repairs noted above and the tenants are entitled to a rent reduction as noted above to continue until such time as the landlord obtains an order confirming the landlord has complied with those orders.

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: December 13 2016

Residential Tenancy Branch