



DECISION

Dispute Codes FF MNDC RP

Introduction

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

- compensation for loss of enjoyment of the rental unit pursuant to section 67 of the *Act*,
- an Order for repairs to be made to the unit pursuant to section 32 of the *Act*; and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

The tenants, a lawyer appearing on behalf of the tenants, the landlord, and the property owner ("the owner") all appeared at the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants testified that they served the landlord with the Notice of Dispute Resolution package, their evidentiary package and their Monetary Order by Registered Mail on December 30, 2016. I find that the landlord acknowledged receipt of this package and was duly served pursuant to sections 88 and 89 of the *Act*.

The owner testified that two copies of the evidentiary package were sent to the tenants on January 11, 2017 by Registered Mail. Two Canada Post tracking numbers were provided to the hearing for reference. The tenants stated that they received the package on January 19, 2017. As this evidence was not received 14 days prior to the hearing as established by the Residential Tenancy branch - *Rules of Procedure*, I must consider whether to accept this evidence, which was late.

The tenants acknowledged that they had an adequate opportunity to review the evidence prior to the hearing. Pursuant to Rule 3.17 of the *Rules of Procedure*, I find that the tenants would not be prejudiced by my accepting this evidence into the hearing. Denying the owner an opportunity to submit her evidence to the hearing when clear efforts were made to provide it in a timely manner would result in a breach of the principles of natural justice. The owner's evidence demonstrates that her evidence was sent to each tenant by Registered Mail on January 11, 2017.

The tenants are applying for a Monetary Order of \$1,112.50, as compensation for loss of enjoyment of the rental suite, pursuant to section 67 of the *Act*. They have also applied to have Orders made for repairs to be made on the rental unit pursuant to section 32 of the *Act*.

The rental unit in question is owned by a woman who resides in Asia. The named respondent, DTS, and “landlord” in this matter acts as agents for the owner.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for loss of enjoyment of the rental unit?
- Should an Order be made compelling the landlord to make repairs to the rental unit?
- Are the tenants entitled to a return of their filing fee?

Background and Evidence

Evidence and testimony were presented at the hearing demonstrating that this tenancy began on September 1, 2016. Rent is \$2,500.00 due on the first of the month and a security deposit of \$1,250.00 continues to be held by the landlord.

The tenants explained that due to their ongoing frustrations associated with the rental unit, they were seeking an Order for repairs to be performed pursuant to section 32 and a Monetary Order pursuant to section 67 of the *Act*. The tenants are asking for a Monetary Order of \$1,112.50 for their loss of enjoyment of the property.

Both the tenants and the owner acknowledged that numerous demands have been made by the tenants to the landlord, concerning issues surrounding the quality of the rental property. As part of their evidentiary package, the tenants provided copies of their email communications with the landlord management company. These emails documented their attempts to rectify issues that the tenants had identified within the rental unit as falling short of their expectations. Specifically, 17 emails were submitted into evidence as having been sent between September 19, 2016 and December 16, 2016 by the tenants to the landlord concerning issues with the blinds, floors, paint and leaking water.

The tenants maintained that they were unhappy that the issues they identified on the Condition Inspection Report were not dealt with in a more expedient manner. Furthermore, they alleged that a verbal agreement had been reached between themselves and the landlord to have portions of the suite re-painted. The Condition Inspection Report notes that the walls are “marked/filled” and the area marked *repairs to be completed at the start of tenancy* was left blank.

Specifically, the tenants are seeking Orders pursuant to section 32 of the *Act* to have portions of the suite repainted, and for blisters in the laminate floor repaired. They stated that they are no longer seeking an Order for the blinds to be replaced, as this work was recently performed. As compensation for their loss of enjoyment, the tenants are seeking \$1,112.50.

The owner of the rental unit maintains that she has been having a difficult time keeping up with the numerous demands of the tenants and is financially unable to immediately fulfill some the issues identified. The owner provided testimony and receipts as part of evidentiary package demonstrating that between September 1, 2016 and December 28, 2016 she has made \$3,532.63 worth of repairs and replacements to the unit. She continued to note that there have been a total of 9 requests for action requiring payment in less than 4 months.

The owner continued by explaining that because she lives overseas, it is difficult for her to stay on top of all demands that are requested of her. She testified that she cannot “continue to afford to keep up with all repairs demanded.” The tenants maintain that “there is nothing stating that these repairs are contingent on owner’s approval as [the corporate landlord] is the landlord and therefore responsible.”

This is contrary to an email dated September 19, 2016 submitted into evidence by the tenants as Exhibit “4e1” in their evidentiary package, where the tenants ask, “Can you inquire about replacing these [blinds] with the owner?” An email from the landlord to the tenants from September 29, 2016 marked as 4e4 continues by saying, “I have obtained a quote and sent it to the owner and am currently awaiting approval.” A further email dated November 19, 2016 from the tenants to the landlord submitted into evidence by the tenants as 4e17 asks, “Can you please work with the owner to get this unit in the expected state what we thought it was in?”

Analysis – Orders for Repair

During their oral testimony and in their written submissions, the tenants raised their objection to the slow pace of progress related to repairs they felt were necessary to bring the rental unit to “the expected state [they] thought it was in.” The tenants cited section 32(1) of the *Act* and the duties of the landlord associated with this provision.

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.

During the course of the hearing, no arguments were put forward concerning the health, safety and housing standards required by law. The tenants instead focused their frustrations on the Condition Inspection Report they had completed at the start of the tenancy, and the assurances they had been given by the landlord that work would be performed to bring the suite to a level of repair that was to their standards.

Examining subsection (1)(b) of section 32 of the *Act*, requires me to turn my attention to *Residential Tenancy Policy Guideline* 40 of the. Here, a guide is provided to aid on determining the useful life of building elements.

Testimony by the landlord was provided that the rental unit in question was built in 2005, making the unit slightly over 12 years old.

The individual demands of the tenants will now be examined.

Interior Painting -

The policy guideline related to painting states that the useful life of interior paint is 4 years. Photographic evidence provided by the tenants indicating spots and holes left by previous occupants demonstrates that painting of the unit is a reasonable request. As such, I am ordering the landlord to perform the necessary paint work on the interior of the rental unit. The landlord provided an estimate for painting work in Annex 5 of her evidentiary package which should be followed.

Pursuant to section 32 of the *Act*, I order the landlord to have all interior painting completed by March 31, 2017. Failure to do so will result in a reduction in rent by \$100.00 for every month beyond this timeline that this work does not occur.

Blinds –

The tenants confirmed that the blinds were professionally cleaned on December 28, 2016 and they were no longer seeking an Order to have work performed on them. A receipt for this service was provided to the hearing as part of the landlord's evidentiary package.

Laminate Floor -

No policy guideline related to laminate floors exists. The policy guidelines available relate only to the useful life of hardwood and parquet floors, which was determined to be

20 years. Testimony provided by the tenants cited the fact that water damage had caused several individual slats to bubble up and separate. The tenants provided photographic evidence of peeling that had occurred.

On November 14, 2016 the landlord arranged for a flooring tradesperson to inspect and report on the state of the floors. The tradesperson noted, "I believe the bubbling/lifting is due to water damage, it appears [to] have come from the counter and followed the seam between the boards. I do not think this will get any worse unless the water is still leaking. Other than cosmetic, there does not appear to be any that have raised enough to become a tripping hazard."

In an email dated November 15, 2016 and marked as 4e15 in the tenants' evidentiary package, it is noted by the tenants that "this [the floor] looks horrible and it continues to lift more and more each time we walk over it. It is damaged in more than a few seams and the corners of a few areas have already lifted." The tenants continued with an email dated November 17, 2016 and marked as 4e17 in the tenants' evidentiary package where they note, "The floor continues to worsen on a daily basis and the corners and edges of some pieces have already raised since your visit. There is currently is a risk of someone tripping...this would likely not happen to D (the female tenant) nor I, as we are aware of the damage, however, our visitors will not be so conscious of the damage."

On November 18, 2016 the landlord responded via email to this serious allegation that the floor had become a health and safety issue. The landlord stated, "As you are now advising that the affected area of flooring is worse and is a tripping hazard I have made arrangements to meet the flooring tradesman at your suite earlier to view the damage and how best to go forward."

Following this meeting, the landlord provided evidence from the flooring expert who viewed the damage on November 21, 2016 and reported that, "Moisture tests were taken in impacted area and non-impacted area for comparison. It is my professional opinion the impacted floor is not a tripping hazard and is only a visual distraction. I as well feel that moisture was isolated and is not worsening."

While I agree that flooring has sustained some damage as a result of water settling underneath the laminate, the degree to which the floor is damaged does not make the rental unit unsuitable for occupation by the tenants.

Analysis – Loss of Enjoyment

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The tenants have made their frustrations with the state of the apartment very clear. It is evident that the tenants feel they have suffered a loss of enjoyment of the rental unit as a result of the unit's deemed deficiencies. As compensation for their loss, the tenants are seeking a Monetary Order of \$1,112.50. They have calculated their loss as follows:

Issue	Start Date of Issue	Proposed End Date of Issue	# of Weeks	% of Rent per week
Painting	01-Sept-16	05-Jan-17	18	1%
Flooring	07-Nov-16	05-Jan-17	8.5	1%
Blinds	01-Sept-16	05-Jan-17	18	1%

Rent = \$2,500.00

1% of rent for each week per issue:

Painting = \$450.00

Flooring = \$212.50

Blinds = \$450.00

Total = \$1,112.50

Much evidence was submitted to the hearing by both sides concerning the efforts that have been made by each party to address the issues surrounding the shortcomings of the apartment as identified in the Condition Inspection Report. Additional testimony was provided by the unit's owner, describing the cost associated with other, unexpected repairs that were deemed to be a priority in the unit. These include a replacement of two sinks and a new washer/dryer unit.

I find that it evident that a concerted and sincere effort has been made by and on behalf of the unit's owner to rectify issues in the apartment as quickly as possible, while at the same time recognizing the realities associated with the costs of the repairs. All issues identified within this application pertain to the tenants' loss of aesthetic enjoyment of the apartment. None of the issues within this claim substantially affect the day to day occupation or well-being of the tenants. As such, I will award the tenants a nominal award of \$200.00 for their loss of enjoyment related to the issues identified. Using the

off-setting contained in section 72(2) of the *Act*, the tenants may withhold \$200.00 from a future monthly rent payment.

Filing Fee

As the tenants were partially successful in their application, they are entitled to a return one-half of their filing fee, pursuant to section 72 of the *Act*. The tenants may withhold a further \$50.00 from a future monthly rent payment.

Conclusion

I order the landlord to perform all painting work identified in the tenants' estimate attached in their evidence package by March 31, 2017. In the event that this does not occur, I order that the tenants' monthly rent be reduced by \$100.00 for each month starting on April 1, 2017, when the repainting has not been completed as per the estimate provided in the tenants' evidence package. The monthly rent reverts to the amount legally allowed under the Residential Tenancy Agreement and the *Act* on the month following the completion of the required painting work to this rental unit.

I order the tenants to withhold a total of \$250.00 from a future monthly rent payment.

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: January 30, 2017

Residential Tenancy Branch