



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR, FF

Introduction

This hearing was scheduled in response to the tenant's application requesting compensation as a rent reduction for repairs, services and facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the tenant's application and evidence, prior to the end of November 2016. The landlord received the tenants' USB evidence but could not access that evidence as she does not use a computer. A friend of the landlord suggested the landlord go to the library but the landlord was not sure anyone would help her use a computer.

The tenants said that prior to filing for dispute resolution they tried to have the landlord access the evidence. No efforts were made to communicate with the landlord once the tenants filed for dispute resolution.

Section 3.10 of the Residential Tenancy Rules of Procedure provides, in part:

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence. If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The tenants confirmed that they did not attempt to communicate with the landlord in relation to the digital evidence, once they had applied for dispute resolution. The tenants were told they could play any audio recordings, during the hearing. The balance of the evidence was not available to the landlord.

The landlord submitted 56 pages of evidence to the Residential Tenancy Branch (RTB) on December 16, 2016. This included 23 coloured photographs. That evidence was hand-delivered to the tenants on January 2, 2016. The landlord said that someone with the RTB told her that the evidence could be given to the tenants four or five days before the hearing.

Section 3.15 of the Residential Tenancy Rules of Procedure requires the respondent to submit rebuttal evidence to the applicant and Residential Tenancy Branch (RTB) no later than 7 days prior to the hearing. The evidence was given to the RTB within the required time limit; however the evidence was not given to the tenants within the required time limit. Therefore, as the tenants objected to the late evidence that evidence was set aside.

I note it appears that some duplicate landlord evidence was contained in the file. The landlord said that a single submission had been made.

The landlord was at liberty to make oral submissions and enter any of the excluded evidence through oral testimony.

The spelling of the tenants' surname on the application was corrected.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$400.00 a month from October 2015 to November 2016, totaling \$5,600.00?

If the tenants are entitled to compensation may that compensation be deducted from rent due to the landlord?

Background and Evidence

The tenancy commenced on June 1, 2015. Rent is currently \$1,234.80, due on the first day of each month. The landlord is holding a security deposit in the sum of \$600.00. The parties signed a tenancy agreement; a copy was not before me.

The parties agreed a move-in condition inspection report was completed. The tenants said they did not sign the report.

The tenants rented a single-family dwelling. The landlord said that the upper level and basement are each 1,100 sq. feet in size. There was agreement that at the start of the tenancy the landlord had indicated the basement would be renovated. The landlord said there was no agreement on the time-frame during which the renovation would occur. The landlord did undertake renovations to the upper portion of the home which were completed by the end of June 2015.

The tenants said that the basement had old paneled walls, an unusable shower, a den, and storage and laundry room. The older drop-ceiling was yellowed from smoking and was to be replaced. The tenants had expected the renovation to commence quickly. The landlord kept telling the tenants she did not have the money to complete a renovation to the basement.

In September 2015 the tenants removed the paneling from much of the walls in the basement. The landlord asked the tenant to complete this work; although the landlord said that she does not track dates, so could not say when this work occurred. The basement continued to be useable, but most of the walls now had exposed framing. The tenants said that on at least a monthly basis they asked the landlord when the renovation would be completed.

Up until April 2016 no further work occurred in the basement. The tenants continued to have use of the area. In April 2016 the landlord had an estimate completed and work commenced in the basement on June 22, 2016. The tenants said there were workers in the unit from June 22 to 26, 2016. At this start of the work the tenants removed their belongings and stored much of it in the second upper bedroom.

The landlord then came to the unit on a daily basis from June 27 to July 5, 2016 between approximately 4:30 p.m. and 7:30 p.m. to complete work in the basement. On July 27, 2016 a hired carpenter began work in the basement.

The tenants made arrangements to have guests in the home from August 9 to 24, 2016 and asked that no work be carried out during this time. An electrician came to the home on August 15, 2016 and was denied entry by the tenants as they did not want any disruption during the time they had guests.

The electrician returned on August 25, 2016 and the carpenter worked in the unit on an almost daily basis from August 31 to September 21, 2016. Effective December 13, 2016 the basement was substantially completed and the tenants could return their personal property to the rooms.

The tenants said that during the renovation the laundry service was disrupted as the machines had to be moved in and out of the laundry room. The tenants did not supply dates of any alleged disruptions but said it was intermittent between sometime in July and October 6, 2016.

The landlord said that the tenants are lying. When the landlord rented to the tenants the rent was set at \$1,200.00, in recognition of the work that needed to be completed to the unit. The tenants responded that the advertisement for the home showed rent in the sum of \$1,200.00.

The landlord replaced windows and kitchen cabinets and sliding doors. There was no agreement as to when the work in the basement would commence. The landlord had said the basement would be renovated but did not say when that would occur.

The landlord said that the tenants denied the electrician access. The landlord did not set out any date when this occurred, other than the single occasion confirmed by the tenants; August 15, 2016.

The landlord said that she does not keep track of dates but the basement was finished. The tenants had tried to stop the work. The tenants did not lose use of the laundry services. When work was completed each day the machines were placed back in the laundry room. The landlord installed a new furnace and made other repairs. If the tenants were not happy they could vacate the unit. The tenants also did not need the space in the basement as there are only two of them living in the home. The landlord reiterated that the tenants were never promised the basement would be renovated and that nothing was "written in stone."

The landlord stated that the electrician had to complete the work before the other trades could carry out the remaining work. When the tenant denied entry in August that delayed completion of the work.

Analysis

Residential Tenancy Branch (RTB) policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. The following consideration is given to a claim:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or the tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

From the evidence before me I find that when the landlord asked the tenants to remove the paneling from the walls in the basement the landlord was confirming the basement would be renovated. However, I can find no indication that the landlord had established a time-frame for the work that was to be completed in the basement.

I find that from October 2015 until the work fully commenced on June 22, 2016 the tenants had use of the basement, in much the same state as it was when they first took possession of the unit. The tenant's furniture remained in the basement and they were not prohibited from accessing and using that space. In the absence of any proof that the tenants' were barred from using this space I find that no loss occurred up to June 22, 2016.

Therefore, I find that the portion of the claim for loss of use from October 2015 to June 2016 is not supported and is dismissed.

I have then considered the balance of the work that was completed to the basement and whether the tenants are entitled to compensation. There is no dispute that work commenced in the basement on June 22, 2016 and that by December 13, 2016 it was substantially completed.

I find that a period of delay from August 9 to 24, 2016 was due to the tenants' refusal to allow the electrician complete work in the basement. A tenant is not entitled to refuse entry if it is for a reasonable purpose and proper notice by the landlord, or agreement for entry has been given. The landlord was attempting to proceed with the renovation and was thwarted by the tenants.

As a result I find that the renovation took a period of approximately 21 weeks. This takes into account the time in August when the tenants denied entry to the electrician.

I have considered section 7 of the Act which sets out the requirement to minimize a claim:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When claiming compensation the party making the claim must show that the loss resulted from non-compliance with the Act, that the value of the loss can be proven and that steps were taken to mitigate the loss claimed. RTB policy suggests that damage can include the loss of access to any part of the residential property under a tenancy agreement.

From the evidence before me I find that the tenants were denied use of the basement for a period of 21 weeks while the landlord completed a renovation. A landlord has the right to complete repairs; however, a tenant is entitled to quiet enjoyment, while respecting a landlords' right of entry to make repairs.

There was no evidence before me that the tenants made any attempt to minimize the claim they have made; for example, by requesting the landlord take steps to have the work completed in a more timely fashion. In fact the tenants denied the landlord access for a period of time in August. It would have been reasonable for the tenants to give the landlord notice that the length of the renovation was causing an unreasonable loss of use of space in the rental unit.

I find that the seriousness of the loss was minimal in that the tenants continued to have use of all services such as a bathroom and laundry. I have rejected the submission that laundry service was denied. It may have been occasionally interrupted, and I have taken that into account. However, the tenants were denied use of the rooms in the basement that they had normally used.

I have weighed the length of time the renovation occurred, the absence of an attempt by the tenants to mitigate the loss they have claimed and the tenants denial of entry to the landlords' electrician and find on the balance of probabilities that the tenants have suffered a loss of use of the basement equivalent to a period of 12 weeks, in the sum claimed per month, of \$400.00.

Therefore, I find pursuant to section 67 of the Act that the tenants are entitled to compensation in the sum of \$1,200.00. The balance of the claim is dismissed.

The tenants may deduct the sum owed by the landlord from the next months' rent owed.

As the application has merit I find that the tenants may recover the \$100.00 filing fee from future rent owed.

Therefore, total compensation to the tenants is \$1,300.00.

Conclusion

The tenants are entitled to compensation in the sum of \$1,200.00.

The balance of the claim is dismissed.

The tenants are entitled to filing fee costs.

The tenants may deduct a total of \$1,300.00 from future rent owed.

This decision is final and binding and 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 10, 2017

Residential Tenancy Branch