



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65, and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent, DF ('landlord'), testified on behalf of the landlord in this hearing, and was given full authority to do so.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and evidence. The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find the tenant duly served with copies of the landlord's evidence.

Issues

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in April of 2013. The tenant testified, during the hearing, that on August 8, 2016, the bedroom window in the upper portion of the house broke upon closing, resulting in injury to herself from the broken glass. The tenant submitted a note from

the medical clinic, dated August 8, 2016, indicating that she had “cut L hand with glass”. The tenant notified the property manager about the situation, and the window pane was repaired quickly. The tenant requested further repairs from the landlord as the window’s pulley system was missing. The tenant sent written correspondence to the landlords discussing the issue, and submitted the letters in her evidence. A letter, dated September 22, 2016 was sent to the landlord and agent requesting “necessary repairs to my unit’s window sashes/pulley systems be made by Monday, October 17, 2016”. The tenant stated in her letter that the windows were not safe to be open and closed. The landlord responded to the tenant with a letter dated October 15, 2016, which was also submitted as part of the tenant’s evidence. The landlord, in that letter, stated that the “failure to open and close a window properly, without due care and attention thereby causing it to break, does not make it a safety issue. We have replaced, without issue and at our cost, the window broken by a tenant, guest or occupant of the suite. Despite this, we have authorized K Glass to perform maintenance on the 5 remaining windows of Suite #2. You may contact them to schedule an appropriate service time during regular hours”. A phone number was provided in the letter. The tenant sent a letter in reply, dated October 15, 2016, disputing that the damage to the window and injury was not due to lack of care and attention, and that it was due to the building being over 100 years old. The tenant made another request for the sash and pulley system. A follow-up letter was sent on November 21, 2016 by the tenant notifying the landlord that despite contacting the glass company, the repairs still have not taken place. She also notified the landlord that the windows may need replacing altogether, as suggested by the glass technician, as the parts may not be available.

The tenant testified that she is still concerned that the windows pose a safety concern as the landlords have not replaced the pulley system. The tenant stated the injury she sustained on August 8, 2016 was from the window smashing as there is nothing preventing the window from stopping when open. The tenant disputes the landlord’s claims that the incident and injury was due to her own misuse, and believes that the window requires further repairs due to the safety issue. The tenant submitted a monetary worksheet for her application requesting \$1,200.67 in compensation as follows:

Item	Amount
Pain and Suffering due to delay in repairs and injury to left wrist	\$1,000.00
Lost income	105.00
Gas Bill	80.67
Doctor’s Note	15.00
Photocopying and Printing Costs for Evidence Package	20.00
Total Monetary Order	\$1,220.67

The landlord responded that the parts that the tenant is requesting are not available, and that the windows are functional. The landlord also testified that she took the steps required to

ensure the windows open and close freely. The landlord submitted, in her evidence, email correspondence with the glass company stating that the “windows were painted shut, but he loosened them so they could be opened”. The emails range from December 19, 2016 to December 20, 2016. An invoice for loosening of the windows was also submitted in evidence, dated December 22, 2016. The landlord submits that the window was broken by the tenant, and not due to any fault of the landlord. The landlord disputes that there was any delay, and testified that the glass company was contacted only to find out that parts were not available for the building, which is over 100 years old. The landlord also submitted that the tenant did not provide any documentation to show loss of income, and that the windows are fully functional. The landlord submits that they had fulfilled their obligation, and nothing further is required from them.

Analysis

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I have considered the testimony of both parties, and while the tenant had provided evidence to support that she was injured as a result of the incident on August 8, 2016, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill her obligations as required by section 32(1) of the *Act* as stated above. I accept the landlord’s testimony that the home is extremely old, and that the landlord has maintained the property in a state of repair as required by law with regard to the age of the home and availability of materials for the home. The landlord had submitted evidence to support her efforts to make any necessary repairs to the windows as recommended by the glass company. The tenant did not provide any witness testimony, nor did she produce any expert evidence, to support that the landlord had failed in their obligations, and especially with regard to the age of the home.

The tenant did not provide any receipts for the costs that she incurred as part of this incident other than the gas bills, nor had she established that the landlord was responsible for the broken window or injury that she had sustained. I find there is insufficient evidence for me to make a finding that the landlord had failed to meet her obligations regarding this matter, and on this basis I am dismissing the tenant's entire application.

Conclusion

I dismiss the tenant's entire application.

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: February 27, 2017

Residential Tenancy Branch