



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, RR, MNDC, OLC, FF

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant PS and the landlord's two agents (collectively the "landlord") attended the hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*. Both parties were given full opportunity to give affirmed testimony and present their evidence.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began on December 1, 2013 on a month-to-month basis. Rent in the amount of \$855.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$410.00 at the start of the tenancy, an amount still held by the landlord. The tenants continue to reside in the rental unit.

On December 6, 2016 the tenant was awoken by water leaking from his bedroom ceiling. The tenant called the manager and the manager removed the ceiling light fixture, isolated the light fixture wire and attended the roof where he cleared off ice and snow. The leaking stopped.

On December 11, 2016 the leaking resumed and the tenant again reported the issue to the manager. The manager attended the roof and cleared off ice and snow. The leaking stopped. This same date the tenant sent an email to the landlord explaining his frustration in dealing with the leaking roof.

On December 12, 2016 the manager called a roofing company and roofers were dispatched this same day. The roofers inspected the rental unit and conducted a temporary repair to the roof.

On December 26, 2016 the leaking once again resumed. The tenant contacted the manager who in turn contacted the roofers. The leaking stopped on December 27, 2016. Roofers did not attend the rental unit or roof until January 6, 2017. The roofers did not conduct any repairs to the roof on January 6, 2017. The roof has not leaked any further to date.

The tenant claims that since December 6, 2016 he has been sleeping on the floor of his living room as he has not received confirmed reports of a repair to the roof. The ceiling light fixture remains unattached, the brown stains from the water remain unpainted and now a noticeable smell of mould is present.

The tenant seeks an order for the landlord to repair the roof, paint the bedroom ceiling, reconnect the ceiling light fixture and conduct an inspection for mould.

The tenant testified that because he has lost the use of his bedroom since December 6, 2016 he seeks reimbursement of rent from December 6, 2016 to January 31, 2017 in the amount of \$1,572.00. The tenant has provided photographs and videos of the bedroom, the leak and his living area.

The landlord testified that the manager attended the rental unit a couple weeks ago to paint the ceiling and reconnect the ceiling light fixture. However, the tenant was not present and the tenant's wife was unsure whether the work should be done. It is the landlord's position that the landlord addressed the tenant's concerns in a quick and efficient manner and that the repair work conducted by the roofers on December 12, 2016 "still holds."

In an effort to support her position, the landlord has submitted a copy of a letter from the roofing company.

Analysis

Pursuant to section 32 of the *Act*, a 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, makes it suitable for occupation by the tenant.

The landlord's testimony that the December 12, 2016 repair "still holds" is contrary to her earlier testimony in which she agreed the roof leaked on December 26, 2016. Based on the evidence presented, I find the repair made on December 12, 2016 was a temporary measure that did not hold as the tenant experienced further leaking in the bedroom on December 26, 2016.

Based on the above, I find the leaking roof was not entirely rectified.

Due to the landlord's noncompliance with section 32 of the *Act*, I order the following;

1. I order the landlord to obtain further evaluation of the roof by a certified roofing professional no later than February 28, 2017. In the event the landlord does not obtain this independent evaluation by February 28, 2017, I authorize the tenant to commence withholding \$128.25 per month in rent as of March 1, 2017, until such time as the independent evaluation is completed.
2. I order the landlord to make the necessary repairs pursuant to the independent evaluation no later than two weeks following the evaluation. The landlord must use a certified professional to make the repairs to the roof. In the event the landlord does not make the necessary repairs within two weeks following the evaluation, I authorize the tenants to commence withholding \$128.25 per month in rent as of the month following this contravention of my order until such time the independent evaluation is completed.
3. Should the certified professional determine repairs are not necessary, written reasons must be provided by the professional to the landlord who in turn will provide the reasons to the tenants.
4. I order the landlord to paint the bedroom ceiling, reconnect the ceiling light fixture and obtain a mould evaluation no later than one week following the necessary repairs (or written determination that repairs are not required). In the event the landlord does not make the above repairs/evaluation within one week following the necessary repairs (or written determination that repairs are not required), I authorize the tenants to withhold \$128.25 per month in rent in the month following this contravention of my order until such time as these repairs/evaluation are completed.

Section 28 of the *Act* establishes a tenant's entitlement to quiet enjoyment which includes rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

The tenants seek reimbursement of rent from December 6, 2016 to January 31, 2017 in the amount of \$1,572.00 for the loss of use of his bedroom.

In this case, I find that as a result of the breach of the tenants' right to quiet enjoyment and the breach of the landlord's obligation to provide a rental unit that complies with section 32 of the *Act*, the value of the tenancy agreement was reduced.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past or future rent by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Section 65 of the *Act* reads in part as follows:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent,...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;..

The water leak was intermittent. Without the confirmation the roof was repaired, I find it reasonable that the tenants would not risk replacing their bed in the bedroom under the source of the leak. I do not accept the tenants' submission that the value of the rental unit was reduced by 100%, as they are still able to use the remaining portions of their rental unit.

With consideration of the objective value of the areas impacted, the nature of water damage, and the duration of the loss, I value the diminishment of the value of this tenancy as 15%. I find that the tenancy has devalued since December 6, 2016. In accordance with paragraphs 65(1)(c) and (f) of the Act, I find that the tenants are entitled to a retroactive rent abatement in the amount of \$128.25 for each of the two months leading up to the hearing for a total of \$256.50. I consider this amount reasonable given the impact that the leak had on the tenants.

As the tenants were successful in this application I find they are entitled to recover the \$100.00 filing fee for a total monetary award of \$356.50.

Conclusion

I order a rent reduction starting in March 2017 of \$128.50 per month should the landlord fail to obtain an independent evaluation of the roof by February 28, 2017. Monthly rent reverts to that established in the Residential Tenancy Agreement and as required by the Act on the month following the completion of these repairs.

I order a rent reduction of \$128.50 per month as of the month following the landlord's failure to make the necessary repairs within two weeks following the evaluation.

Monthly rent reverts to that established in the Residential Tenancy Agreement and as required by the *Act* on the month following the completion of these repairs.

I order a rent reduction of \$128.50 per month as of the month following the landlord's failure to paint the bedroom ceiling, reconnect the ceiling light fixture and obtain a mould evaluation within one week following the necessary repairs (or written determination that repairs are not required). Monthly rent reverts to that established in the Residential Tenancy Agreement and as required by the *Act* on the month following the completion of these repairs.

I order the tenants to deduct \$356.50 from future rent payable to the landlord at the rental unit, in full satisfaction of the monetary award for the loss in value of the tenancy agreement for the period from December 6, 2016 until January 31, 2017.

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 1, 2017

Residential Tenancy Branch