



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP RP MNDC FF

Introduction

Both parties attended the hearing and gave sworn testimony. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord do emergency repairs pursuant to section 33; and
- b) That the landlord repair and maintain the property pursuant to section 32;
- c) Compensation and refund of rent for neglect of the landlord to repair and resulting breach of their peaceful enjoyment and loss of useful space; and
- d) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act and that this caused them loss of peaceful enjoyment and constriction of useful space? If so, are they entitled to orders that the landlord do necessary repairs and to compensation for neglect of repair?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2011, it is now a month to month tenancy, rent is \$1029 plus utilities a month and a security deposit of \$500 was paid. The tenant is requesting compensation of 3 months rent (\$3870) for lack of timely repair and loss of peaceful enjoyment. The tenant provided a statement in evidence noting the problems with leaking since 2012.

In the middle of 2012, she said they found leaking. She reported it to the landlord and the next day the leaking stopped. The landlord's father in law had shut down the dishwasher of the upper tenants. She said the leaking started again after a few months and this time, it was not fixed for a month. She had a bucket catching the drips. She said she could not remember any dates or which month it was not fixed. The landlord

denied this. He said he had a plumber come and he found nothing. The father in law came back and found a dripping faucet upstairs and fixed it. He said they attended to it quickly for they do not want water damage in the home.

In 2013, the tenant said the leak occurred intermittently again. She could not remember any dates. She said the father in law came with another person but it took a few months to fix it. The landlord said the father in law came with a plumber and fixed the leak very quickly. He said the father in law lives nearby and comes quickly to fix any problems but it is now so many years that they no longer have the plumber's invoice.

In 2014, the tenant said there was more leaking and even in the bathroom. She said it took two weeks for the father in law to come. She provided no details of dates. The landlord said the 2014 leak was from the dishwasher above and the father in law fixed that and the drywall damage from it. He provided a text from the tenant dated December 1, 2014 thanking him for sending the father in law to fix a heater.

In Spring of 2015, the tenant said the kitchen started leaking also. She said she texted the landlord that she would get a plumber unless he fixed it. The father in law and another man (the plumber?) came and worked upstairs after 3 days.

In early 2016, the tenant said there was serious dripping from the kitchen ceiling. The father in law came after a few hours and after investigation, shut down the dishwasher from upstairs. Next, the tenant said the bathroom ceiling was dripping and she needed a bucket to catch the water. She said the brother of the landlord came and looked at it and said they would get it fixed but it took months before they did it. She did not remember which months it was not fixed. She said after a month a painter came and said the landlord had sent him. The landlord said in August 2016, there was dripping from the dishwasher upstairs and it was fixed. In September, there was a drywall professional to fix the drywall. He pointed to a text in evidence where he told the tenant at that time.

The landlord said in December 2016, there was another leak and they got access to the upper tenant's unit (who was on vacation) and fixed the leak. An invoice is in evidence to show this. The tenant said she had buckets to catch the water in December and the problem was not fixed until the third week of January 2017. She said on January 31, 2017, her son called her telling her the leak was worse. She said she heard nothing after calling the landlord. The landlord provided two invoices, one dated December 27, 2016 and the second dated February 2, 2017 pertaining to fixing the leaks. He said this house was built in 1951 and it has the typical older house problems of not being adaptable to having modern appliances installed. He said they have replaced the

problem dishwasher and the early leaks were moist spots or small drips coming down a beam. He said it wasn't until August 2016 that there was a leak affecting drywall. They had it repaired but had to wait for final sanding and painting. He said the tenant had decided they were leaving at the end of February 2017 and began giving them a very hard time over gaining access to fix and paint drywall. This persisted until she left. He provided several emails of their exchanges. He said the photographs from the tenant were taken in December 2016 and January 2017 while they were having problems getting access to fix the drywall. They believe she was deliberately trying to make things look worse to get money when she was leaving. They denied ever seeing buckets used by the tenant to contain water from leaks.

The tenant called the City on February 6, 2017 and found out it was an illegal suite. The landlord said he was informed it was legal when he bought the home and he is working with the City on this. The City found no problems with the condition of the suite.

The upstairs tenant gave evidence. She said the landlord had access over the years to their suite to deal with issues of the downstairs tenant. She saw plumbers come and fix things such as a leaking pipe in her dishwasher. They changed the dishwasher too. She said they did not have to wait to have repairs done upstairs. There was some delay in getting a new fence and deck but that has been done. She noted the downstairs tenant left and did not pay her portion of the utilities to her.

In the evidence are statements, photographs, many texts and a Notice of Rent Increase.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Since the tenant has vacated the unit and the landlord said they have done necessary repairs for a new tenant, I find insufficient evidence to order repairs. I dismiss this portion of the tenant's application.

In respect to their claim for compensation, awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The tenant, then, must prove on a balance of probabilities that the landlord through act or neglect failed to provide a unit to them in a reasonable state of repair and/or neglected to do necessary repairs in a timely way.

I find the testimony of the tenant and the landlord is conflicting with regard to the damage and timing of repairs to the unit. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I find the landlord did not cause the leaks of which the tenant complains. I find they were leaks from upstairs appliances or pipes, which the landlord stated might be caused by trying to adapt new appliances to older houses. His information is confirmed by some repair invoices and by the testimony of the upstairs tenant who gave access to her unit to effect repairs.

In respect to the tenant's claim that the landlord was negligent in repairing in a timely way, I prefer the testimony of the landlord and find it more credible. I find his credibility is supported by text messages and witness testimony that supports that repairs were done in a timely manner. On the other hand, when queried, the tenant could not remember actual months when repairs were not done. She said she had buckets to catch the water and yet provided no photographs to support this, although she provided undated photographs of ceiling damage. I find she did not deny the landlord's allegation that these photographs were taken in recent months while she was denying access to repair the ceilings. When invited by the landlord, I examined the tenant's photograph of the bathroom ceiling and saw that the repair had been started with the mudding of the ceiling. I find the landlord's evidence credible that the tenant prevented access to finish repairs and painting during the last months of her tenancy as the text messages between them support this and the fact that she denied access for prospective tenants to view. The landlord speculated that she was trying to make the ceilings look worse to elevate her compensation.

I find the landlord's statement credible that they would not allow continuing water damage in their home and they have a relative who lives nearby check problems

immediately and get repairs done. This was confirmed by the upstairs tenant's testimony as happening with her tenancy. I also find that the landlord's actions in putting in a new fence and deck support their contention that they do repairs as soon as possible and try to keep the home in good condition.

I find insufficient evidence to support the tenant's application that the landlord through act or neglect caused her loss of use or peaceful enjoyment by not repairing and maintaining the house in a timely way.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. I find they are not entitled to recover the filing fee due to lack of success.

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: March 09, 2017

Residential Tenancy Branch