Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC

Introduction

A hearing was convened to deal with an application by the tenants under the *Residential Tenancy Act* (the "Act") for an order that the landlord comply with the Act, regulations, or tenancy agreement pursuant to s. 62(3) and a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement pursuant to s. 67. The tenants also seek recovery of the application filing fee from the landlord.

The tenants' original application, filed April 6, 2017, concerns access to storage space and garden, utilities shared with the downstairs tenant, and noise complaints. Only the storage space and utilities issues were pursued at the hearing.

On April 26, 2017 the tenants amended their application to add a request for an order requiring the landlord to repair the basement staircase, the leaking roof, a hole in the backyard, and the stove/oven, and to clean up unsanitary conditions alleged to have been caused by the new tenant. The last issue was not pursued at the hearing. The amended application also adds a claim for $2,500.00. The tenants have not included a monetary order worksheet or supporting evidence for their monetary claim. It is therefore unclear how they arrive at this dollar amount.

Both of the tenants and the landlord attended the hearing. A witness also attended for the landlord. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to make submissions and to respond to the submissions of the other party.

Service of the tenants' application, notice of hearing, and amended application was not at issue.

Both of the parties submitted a substantial amount of documentary evidence on various dates. Most, but not all, of that evidence was received by the other party. Evidence that was not in the possession of both parties was not considered unless otherwise stated in this decision. Additionally, although I have reviewed and considered all evidence and testimony before me that met the requirements of the Rules of Procedure, I refer to only the relevant facts and issues in this decision.

Preliminary Issue: Request for Adjournment

At the outset of the hearing the landlord indicated that he wished to adjourn the hearing. He stated that he is 80 years old and that he wants a lawyer or a senior's advocate involved. He also stated that a crime has been committed against him and that he has police reports documenting this, which reports were not in evidence.

At my request the tenants set out in brief the issues they would like to have addressed. The tenants seek orders that the landlord remove a lock from storage to which they say they should have access, that he register the utilities for the rental property in his name, and that he make various other repairs.

Both parties agreed that this tenancy will be ending at the end of June, 2017, under the terms of an agreement reached in another Residential Tenancy Branch Proceeding, the file numbers for which are reproduced on the cover page of this decision.

Rule 7.9 of the Rules of Procedure set outs some of the factors an arbitrator may consider with respect to request for adjournment:

- the oral or written submissions of the parties
- the likelihood of the adjournment resulting in a resolution
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment
- whether the adjournment is required to provide a fair opportunity for a party to be heard, and
- the possible prejudice to each party

At the outset of the hearing I advised the parties that I would not grant an adjournment. I refused the request for several reasons. One, the landlord has been aware of this application for several weeks and has been submitting his own evidence in response to the application since April 20, 2017. He has thus had sufficient time to arrange for the assistance of a lawyer or an advocate. His materials include a copy of an email correspondence between himself and an advocate dated April 24, 2017, with the

advocate asking for information and asking whether there is an upcoming hearing. There is no evidence as to why the landlord did not arrange for the services of the advocate on April 24, 2017. The landlord did not suggest that an adjournment was necessary to provide him a fair opportunity to be heard, and he was clearly capable of advocating on behalf of himself and examining his witness.

Two, the landlord in written submissions dated April 26, 2017 alleges that the tenants have not given him adequate notice to speak to the downstairs tenant in order to attempt to resolve the issues and/or hear her side of the story. I do not accept that the landlord has not had adequate time to address the issue of storage, which is the primary issue with the downstairs tenant, and which was raised in the tenants' application filed in early April, 2017.

In written submissions dated May 3, 2017 the landlord seeks an adjournment "until full disclosure is made." The landlord appears to be seeking receipts for repairs by the tenants in May and evidence from the tenant's doctor about where and when and how the tenant injured herself. I do not consider that this disclosure would be sufficiently relevant to the issues raised by the tenants to warrant an adjournment. I also note that some of this material has been disclosed.

In written submissions submitted to the RTB on May 5, 2017 the landlord adds to his reasons for an adjournment. Most of the additional reasons are submissions on the issues involved in the tenants' application. For instance, the landlord says that on May 4, 2017 three witnesses examined the stairs and found them in good condition, that the rental agreement is forged, and that there are two police reports concerning the tenants. The only submission relevant to the landlord's request for an adjournment in the May 5 document is "THIRD SUMMISSION SEND TO DEFENT ON MAY 3RD" which I understand to mean that the landlord received a written submission or documentary evidence from the tenants on May 3, 2017. However, I am satisfied that the landlord, who submitted additional materials to the RTB and tenant as late as May 9, 2017, has had an opportunity to consider and respond to all of the tenants' written submissions and documentary evidence.

Lastly, I have refused the landlord's request for an adjournment because the tenants are seeking various repair orders, and are vacating in less than six weeks, and will therefore be prejudiced if the hearing is delayed.

Issue(s) to be Decided

Are the tenants entitled to orders that the landlord comply?

Are the tenants entitled to monetary compensation?

Are the tenants entitled to recovery the application filing fee from the landlord?

Background and Evidence

The parties agreed that the tenants rent the top suite in a free standing home and that other tenants rent the bottom suite. According to the tenancy agreement in evidence this tenancy began in September of 2009. Rent is $1,600.00 monthly, due on the first of the month. Both of the named tenants are on the tenancy agreement and both have signed it, as has the landlord. It indicates that storage is included in the tenancy. Although it was the landlord who submitted the tenancy agreement to the Residential Tenancy Branch ("RTB"), his cover letter indicates that the female tenant is not listed as a tenant in the contract and that the contract does not included storage.

The landlord may be referring to another document, which he also submitted, titled "Application to Rent," and which has been completed by the male tenant only. Under both the Application to Rent and the tenancy agreement, the tenants are responsible for their own utilities. The Application to Rent also states: "Renting as is as it is old house tenant can not sue the owner for any damage" and "Tenants pay for heat – electric – gas – water – garbage . . . Basement tenant pays ¼ of heating bill to top tenant." It also states: "Take care of front and back yard, provide lawn [unclear] . . . minor repair rent will increase 2% every year."

Storage

The female tenant testified that a new renter moved into the downstairs suite in March of this year, and that she removed the tenants' belongings from the storage room and padlocked the storage room door. Included in the tenants' evidence is a letter from the tenants to the landlord dated March 19, 2017 stating in part: "The new tenant claims you rented out/told her that she can use the backyard to store her trailer, the storage space, where she now put her motorcycle and locked it, as well as the basement, where she started to move our possessions around to make room for storing her things . . . Let me remind you that all these spaces have been rented out to us since 2009 and can not be rented out or promised usage for the tenant in the basement suite." The March 18, 2017 letter closes with: "I am kindly asking you to please address all our concerns by March 26, 2017." In another letter dated April 20, 2017 which was also in evidence the tenants remind the landlord that this issue has not been addressed.

The female tenant testified that they have since been keeping the items that were in the storage room in their suite and outside of the rental unit, and that they are crowded as a result. She has make inquires and discovered that storage of comparable dimensions (5ft x 10ft) costs about $225.00 plus GST per month through a storage company. No documentary evidence was submitted in support of this amount. The tenants seek an order that the landlord remove the padlock and the downstairs tenant's belongings from the storage room and allow them to use the storage room again.

In response the landlord says that he has done what he agreed to do under an agreement reached in a prior RTB hearing in terms of cleaning up garbage in or around the storage room. He also says that he does not know if there is a padlock on the storage room. The landlord's witness stated in response to my question that there is no padlock on the storage unit.

Roof

The tenants also seek an order requiring the landlord to repair the roof, which they say is leaking. They say that the leaking had been manageable until heavy rains over Easter, and that recently they woke up to water on their kitchen countertops and kitchen cupboards so wet that they cannot store items in them. The tenants also submitted photographs of some mold inside of the kitchen cabinets. The female tenant said that when she asked the landlord to repair the roof he said that he would not and that his refusal to do so was nice because repairing it would require the tenants to vacate the unit.

The tenants' wrote the landlord a letter dated April 20, 2017 that is included in evidence. It states in part: "During the last big rainfall the roof over the top kitchen cabinets have started leaking, so far we have been able to put some cans underneath and inside the cabinets, but I'm kindly asking you to please take care of the situation."
The landlord in response says that there is no leak. In written submissions dated May 1, 2017 he says that the tenant advised the roof was leaning on April 24 and that he attended the following day, observed a lifted tile, and patched it up. He says that on April 29 he attended with his witness and there was no roof leak. He also says that a real estate agent attended on April 28 and inspected the inside and outside of the home for a prospective sale "and indicated that the property was in good form . . . there is no roof leak."

A letter from a real estate agent was submitted. It said:

> I have had the opportunity to evaluate your property . . .on April 28, 2017. I had access to view the upstairs of the home. The home is kept in a safe condition and there were no visible dangers I came across. The premises in its current condition is rentable. The stairs leading downstairs were fine and did not need immediate repairs. I did not see any roof damage that led me to believe there were any leaks. All in all, the home is in a safe and good condition to occupy.
>
> I would like the pleasure of sitting down with you and discussing the potential of your property.

The landlord's witness also said that there are no leaks.

Utilities

The landlord and the tenants agree that the utilities for both suites are in the tenants' name and that historically the upstairs tenants have collected 25% of the utilities costs from the downstairs tenants. However, the new downstairs tenant has not been willing to contribute as the prior downstairs tenant did. The tenants also say that the utilities costs have increased substantially with the new tenant, and that they understand the landlord told the new downstairs tenant that her rent includes utilities. The tenants' March 19, 2017 letter to the landlord raises this concern and asks that the landlord please let them know what his plan is to cover the basement tenant's electrical and gas expenses.

The landlord says that the new downstairs tenant is a friend of the family and a student not often in the unit, in part because she has been treated badly by the upstairs tenants. In response to my question of the landlord's witness as to whether there is currently a downstairs tenant, the witness said: "Yes, everything is fine."

The tenants did not submit utilities bills for the period of time since the new downstairs tenant has been involved. They are seeking an order that the landlord transfer the utilities for the rental property into his name immediately.

Oven

The tenants say that the oven is broken. They do not know exactly what is wrong with it but say that they believe a fuse is tripping and that the landlord told them it was probably a connection problem but now it has started burning. They also say that the landlord told them to have it repaired and subtract the cost from their rent but that they

do not owe any additional rent as the landlord agreed in their prior settlement to waive June rent.

The tenants' April 20, 2017 letter to the landlord reports the concerns with the oven: "The oven stopped working, I have tried to change the breakers but unfortunately it has not solved the issue. Also, I have checked the heating coils inside the oven they seem to be in good condition. I did not been able to find the cause of the problem, and the oven is still unusable."

The landlord in response says the tenants have not paid May rent and that the oven is working. The landlord asked his witness, "Was the oven working good?" and the witness replied: "Yes." The landlord did not explain why the witness would have been in the tenants' rental unit and how it was that they came to be testing the oven.

Backyard

The tenants also say that there is a hole in the backyard underneath an old septic tank. They have been afraid to let their children use the backyard because the earth there collapsed under the weight of one of their young children. They had Roto-rooter staff inspect it, and were told that there was a cavity underneath resulting from a tank had been covered with wood that has since rotted. They say the landlord has insufficiently repaired the cavity and while he was working on it he threw some of the tenants' plants into the hole. In the tenants' April 20, 2017 letter to the landlord the they state: "During Easter holidays a big hole appeared in the middle of our backyard. I have taken some pictures of it, it looks like there is a cave like cavity underneath the top soil. I have been restricting my family to the use of the yard as I'm afraid the rest of the soil above the hole will erode." The tenants have submitted photographs of the hole and the more cavernous space and the wood underneath the hole.

The landlord in response said there is no septic tank, and that the hole has been filed with rocks. In his written submission of May 1, he says that he "patched up a hole in the backyard" with the help of his witness. The landlord asked his witness whether the backyard was fine, whether you could drive a truck over it, and the witness responded: "Yes." No photographs were provided in support of the landlord's position.

Stairs

The tenants also seek an order that the landlord repair the inside basement stairs. The tenant says that she fell over loose carpet on the inside stairs and injured herself as a result. Although she submitted medical evidence substantiating her injury, she clarified

that she is not seeking compensation for the injury, and the medical evidence was only submitted to show that the stairs are not safe. She said that the carpeting has not been repaired on the inside stairs and that the landlord has redirected them to the outside stairs, which are also rotten and more hazardous than the inside stairs.

The landlord submitted photographs of the inside stairs on May 8, 2017. His cover letter to the RTB state: "Steps solid. Carpet solid. Railing solid." The photographs are black and white photocopies and it is not possible to see the carpet. The landlord also pointed to the letter from the realtor stating as support for his position that the stairs do not require repair. The landlord's witness also stated, simply, that the stairs were in good condition.

The landlord alleged that the tenants have been taking advantage of him, that he still works, for a low hourly wage, and that the tenants' application is unfair. He says the tenants have caused $10,000.00 in damage to the rental unit, but he has not yet brought his own claim. He says that he believes the tenants will be moving away and he will not be able to collect. In his submissions of May 1, 2017, he stated: "I claim the tenants are trying to harass me before their move out date. The tenant's credibility is in question . . . [the downstairs tenant] has reported the tenants to the police. I am not able to sleep at night and I have been experiencing significant stress. As a result, I claim $10,000.00 for pain and suffering damages against the tenants . . .". The landlord has not yet brought this claim either.

Analysis

This tenancy has clearly become acrimonious, and the parties conflict on many things. On balance, I prefer the tenants' evidence over the landlord's. This is because I found the landlord's evidence inconsistent at times. For instance, the landlord in his oral submissions asserted repeatedly that the tenants haven't paid rent for May. However, in his May 1, 2017 written submission the landlord admits to having received partial rent for May, but says that the tenants have not provided him with receipts for deductions made. I do not give much weight to the testimony of the landlord's witness. This is because he did not appear to understand my questions, and he also appeared to have been prepared in advance to answer the landlord's questions in the affirmative.

Storage

I accept the tenants' evidence that the downstairs tenant has padlocked the storage space which the tenants have been using for the duration of the tenancy. I also accept

that the tenants are entitled to use the storage space. The tenancy agreement very clearly indicates that storage is included.

The tenants raised this concern with the landlord in writing twice, on March 19 and again on April 20, and yet the landlord has apparently not yet investigated this. At the hearing he testified that he did not know if the storage room was padlocked. His witness testified that it was not locked, which seemed an unreliable answer in light of the fact that the landlord himself is unaware of whether or not it is locked.

Accordingly, I order the landlord to comply with the tenancy agreement and remove the padlock on the storage room door and clear out the downstairs tenant's belongings from the storage room no later than May 25, 2017.

I also award the tenants $450.00, representing two months of storage fees, for the two months that they have been without storage to this point. If the landlord does not make the storage space available to the tenants then they are at liberty to reapply for compensation for loss of storage space for the remainder of their tenancy.

Roof

Again, I prefer the tenants' evidence that the kitchen roof leaks in heavy rain. Although the landlord, his witness, and the realtor have all inspected the rental unit and say that there are no leaks, it is not clear that they have done so on days of heavy rain. Nor is it clear that they inspected the roof from outside of the unit or looked beyond the kitchen ceiling.

Section 32 of the Act requires the landlord to provide and maintain residential property so that it is compliant with 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 a tenant. A roof that leaks is not compliant with this section.

Accordingly, I order the landlord to repair the roof no later than May 25, 2017. If the landlord does not comply with this order and if the tenants are required to deal with further leaking, they are at liberty to bring an application for monetary compensation after the end of their tenancy for loss of enjoyment between the date of this decision and the end of their tenancy, provided they can substantiate that loss. The tenants are also at liberty to reapply for compensation for loss of enjoyment caused by the leaking to date.

Utilities

The landlord and the tenants agree that the utilities for both suites are in the tenants' name and that historically the upstairs tenants have collected 25% of the utilities costs from the downstairs tenants. This arrangement is not acceptable as the landlord is effectively requiring the upstairs tenants to do his work for him. The arrangement is all the more unfair now that the downstairs tenant is not contributing to the cost.

The tenants did not submit utilities bills for the period of time since the new downstairs tenant has been involved. They did not offer any basis upon which a monetary award could be made. They are seeking an order that the landlord transfer the utilities for the rental property into his name immediately.

I order the landlord to transfer the utility accounts into his name no later than May 25, 2017. If the landlord does not comply with this order the tenants are at liberty to apply for monetary compensation after June 30, 2017 for the cost of a portion of the utilities costs between the date of this decision and the end of their tenancy. The tenants are also at liberty to reapply for compensation for a portion of the utilities costs since the new downstairs tenant began occupying the downstairs suite.

Oven

I prefer the tenants' evidence that the oven is not working. An oven is included in the tenancy and is necessary for the tenants. I order the landlord to repair the oven at his own cost no later than May 25, 2017. If the landlord does not comply with this order the tenants are at liberty to apply for monetary compensation after June 30, 2017 for the loss of the use of the oven between the date of this decision and the end of their tenancy. The tenants are also at liberty to reapply for compensation for loss of use for the period between the date the oven stopped working and the date of this decision.

Backyard

It is not clear on the evidence whether the backyard hole has been safely repaired. The landlord recognizes that there was a hole and has testified that he has repaired it. He has not submitted any photographs or any other sort of evidence about the repair, with the exception of his witness stating that backyard is fine and that you could drive a truck over it. As the burden is on the tenants to establish the need for repair, and the tenants have only submitted evidence on the state of the backyard before repair, I decline to make any order. The tenants may reapply for compensation for loss of use of the backyard and must particularize their claim.

Stairs

I accept the tenants' evidence that the carpet is lose or fraying and incompletely covers some of the inside basement stairs. This is clearly a safety issue, as the tenant's injury shows. The photographs submitted by the landlord were so dark that the fact that the stairs are carpeted at all could not be made out. As a result they do not assist the landlord in establishing that the stairs are safe. I do not accept that the statement by the landlord's realtor that the stairs "were fine and did not need immediate repairs" means that the carpeting on the stairs is not a safety concern.

Based on the above, I order the landlord to affix or completely remove the carpet on the interior stairs no later than May 25, 2017. If the landlord has already done so, then he has already complied with the order. If the landlord does not comply with this order the tenants are at liberty to apply for monetary compensation after June 30, 2017 for the loss of the use of the stairs between the date of this decision and the end of their tenancy. The tenants are also at liberty to reapply for compensation for the period between the date they reported their concern about the stairs to the landlord and the date of this decision.

Conclusion

I find that the tenants are entitled to $450.00 as compensation for loss of storage space. I dismiss the balance of the tenants' monetary claim, with leave to reapply, as it was not sufficiently particularized.

As the tenants' application is partially successful, I grant them the cost of the filing fee in the amount of $100.00 pursuant to s. 72(1) of the Act.

I issue a monetary order in the tenants' favour and against the landlord in the total amount of $550.00 ($450.00 for loss of storage and $100.00 filing fee). The landlord must be served with this order as soon as possible. Should the landlord fail to comply with this the order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I make the following additional orders:

- I order the landlord to comply with the tenancy agreement and remove the padlock on the storage room door and clear out the downstairs tenant's

belongings from the storage room and provide the tenants with this storage space no later than May 25, 2017.

- I order the landlord to repair the roof no later than May 25, 2017.

- I order the landlord to transfer the utility accounts into his name no later than May 25, 2017.

- I order the landlord to repair the oven at his own cost no later than May 25, 2017.

- I order the landlord to affix or completely remove the carpet on the interior stairs no later than May 25, 2017.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act and is final and binding pursuant to s. 77 unless otherwise indicated in the Act.

Dated: May 16, 2017

Residential Tenancy Branch