



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, MNDC, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order that the Landlord make repairs, emergency and otherwise, an Order for monetary compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference on May 24, 2017. The Tenant, her advocate and the Landlord's agent called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlord be ordered to make repairs, emergency and otherwise?
2. Is the Tenant entitled to monetary compensation from the Landlord?
3. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which confirmed this one year fixed term tenancy began October 1, 2016. Monthly rent is \$1,100.00.

The Tenant also provided detailed written submissions and a timeline in support of her claim. She also provided photos of the rental unit, and copies of communication she has had with the Landlord regarding her concerns.

In the within action the Tenant sought an Order that the Landlord make the following repairs:

1. replace the wood flooring which is damaged as a consequence of the leaking hot water tank;
2. hire a remediation company/mold expert to assess any mold issues created by the leaking hot water tank;
3. repair the walkway to the rental unit;
4. install motion activated light at the bottom of the walkway; and
5. replace light bulb at top of walkway;

The Tenant submits that the issues with the hot water tank began as soon as she moved into the rental unit. She stated that the former owner, K.B., resided in the upstairs unit and informed her that the hot water tank leaked and a bucket had been set up to catch the overflow. He further informed her that he had purchased a new tank which was in the garage for the Landlord to use as a replacement. She confirmed that at the time of the hearing the tank had been replaced, but the leaking water significantly damaged the rental unit's laminate flooring as well as creating mold and a musty smell. The Tenant stated that despite her repeated requests, the Landlord has not attended to the required repairs to the flooring, nor have they hired someone to come and assess the moisture/mold issues.

The Tenant also stated that the walkway to the rental unit is very dangerous, particularly when it snows or rains. Photos of the walkway show a brick staircase which is steep and uneven and appear as though the walkway is not built to building codes.

The Tenant further stated that in addition to the hazards created by the structure of the walkway, one of the motion detecting lights at the top of the stairs is burned out and in general the walkway is inadequately lit. She requested that the Landlord replace the broken light and install another motion detecting light at the bottom of the walkway to improve safety. She confirmed that due to the height of the existing light she is not able to replace it herself. This is evident in the photos submitted by the Tenant.

The Tenant testified that due to the unsafe condition of the stairs her son fell and suffered a concussion. Medical evidence submitted by the Tenant confirms this to have occurred.

In addition to the requested repairs, the Tenant also sought monetary compensation in the form of a 50% retroactive rent reduction for six months. The Tenant's advocate stated that she sought this amount as a result of the Landlord failing to attend to the above required repairs, and the fact that the Tenant had to empty the hot water tank overflow bucket daily due to the malfunctioning hot water tank, having to live with the mold and musty smell, as well as the unsafe condition of the walkway. The Tenant's advocate stated that in September and October the Tenant was emptying the hot water tank bucket every two to three weeks. When the weather got colder in November, the bucket was filling up every seven hours. The Tenant couldn't even go to work for a full day without coming home to water on the floor.

The Tenant's advocate further stated that the Landlord was well aware of the problem yet failed to take any steps to correct it. In fact, he says she was informed that she had to empty the bucket regularly shortly after she moved in, such that the Landlord knew this was a problem. The Tenant informed the Landlord's husband, T., in October 2016 that the bucket was filling regularly, and then in January of 2017 the Tenant sent a text message (which was included in the material).

The Tenant's advocate also stated that when the previous owner moved out and disconnected his phone line (which had been communicating with the alarm company), the result was that the alarm beeped constantly. He stated that every 15 seconds the alarm beeped and this went on for 17 days and it was audible in every area of the rental unit. The Tenant's alarm in her rental unit beeped as well also due to the phone being disconnected.

The Landlord's agent testified as follows.

She stated that she agreed that the flooring should be addressed as well as the mold.

She further agreed that the walkway was problematic, but claimed that she spoke to the Tenant on December 22, 2016 and the Tenant said it was “okay, and she did not expect anything done” as it was only problematic when she wore high heels.

The Landlord's agent stated that it took a “few months” to replace the hot water tank and that it was “their mistake”.

In response to the Tenant's request for a 50% reduction, the Landlord's agent stated that this was unreasonable. She stated that the Tenant was able to go about her life, and was not being kept up because of the hot water tank. She stated that she did not believe that the Tenant should be compensated for the inconvenience of the hot water tank as, “if it was such a big issue the Tenant could have replaced the hot water tank pursuant to section 33 of the *Residential Tenancy Act*.”

The Landlord's agent also stated that they knew there was a new hot water tank, but they were not in the rental unit and therefore didn't realize that it was dripping and causing damage to the floor.

The Landlord's agent stated that the Tenant spoke with the previous owner and knew about the replacement tank as early as September 29, 2016 (before she moved in) and as a result the Tenant should have told the Landlord.

The Landlord's agent agreed that the Tenant's request for \$660.00 for the impact of the alarm beeping was reasonable.

Analysis

Section 32 of the *Residential Tenancy Act* reads as follows:

Landlord and tenant obligations to repair and maintain

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.

...(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find, based on the evidence before me, that the Landlord breached section 32 in failing to replace the hot water tank and address the beeping from the alarm system in a timely fashion.

I accept the Tenant's evidence that as a consequence of the Landlord failing to address the leaking hot water tank, that the flooring has been significantly damaged. I further accept the Tenant's evidence that water damage has also caused the rental unit to suffer from mold and a musty smell.

I reject the Landlord's agent's argument that the Tenant could have paid to replace the hot water tank pursuant to section 33 of the *Act* which deals with emergency repairs. As noted earlier in this my Decision, the Landlord's had available to them, a replacement tank, and it would have been unreasonable for the Tenant to purchase another tank in the circumstances.

I find, based on the photos submitted by the Tenant, as well as her evidence that her son fell and suffered a concussion, that the walk way is unsafe and requires repair and or replacement.

I therefore Order as follows:

The Landlord must, by no later than June 30, 2017:

- 1. replace the wood flooring which is damaged as a consequence of the leaking hot water tank;**
- 2. hire a remediation company/mold expert to assess any mold issues created by the leaking hot water tank;**
- 3. repair the walkway to the rental unit;**
- 4. install motion activated light at the bottom of the walkway; and**
- 5. replace light bulb at top of walkway.**

In this case, the Tenant alleged that her right to quiet enjoyment was negatively affected as a result of the leaking hot water tank and the beeping alarm. She seeks the equivalent to a 50% rent reduction for a period of six months. As she paid rent in the amount of \$1,100.00 this represents compensation in the amount of \$3,300.00.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. As noted previously, I find the Landlord breached section 32 of the *Act*, by failing to replace the hot water tank and deal with the .

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has met the burden of proving the Landlord breached section 28 by failing to maintain the property and attend to required repairs.

I am unable to find that the Tenant is entitled to a 50% rent reduction for a six month period. I accept that the 17 days of the alarm beeping significantly interfered with the Tenant's ability to enjoy the rental unit. I further accept that daily maintenance of the hot water tank was similarly intrusive. In all the circumstances, I find the Tenant is entitled to 25% rent reduction for that time period and I therefore award her the sum of **\$1,650.00.**

The Tenant, having been successful, is entitled to recovery of the \$100.00 filing fee for a total Monetary Award in the amount of **\$1,750.00.** The Tenant may reduce her monthly rent until this sum is repaid. Should she vacate the rental unit prior to being compensated the full \$1,750.00, she may apply for a Monetary Order for the balance due.

Conclusion

The Tenant's request for an Order that the Landlord make repairs to the rental unit is granted.

The Landlord must, by no later than June 30, 2017:

- 1. replace the wood flooring which is damaged as a consequence of the leaking hot water tank;**
- 2. hire a remediation company/mold expert to assess any mold issues created by the leaking hot water tank;**
- 3. repair the walkway to the rental unit;**

4. install motion activated light at the bottom of the walkway; and

5. replace light bulb at top of walkway.

The Tenant is entitled the sum of **\$1,750.00** representing a 25% rent reduction for a period of six months as well as recovery of the \$100.00 filing fee. The Tenant may reduce her monthly rent until this sum is recovered.

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: June 2, 2017

Residential Tenancy Branch