



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding KENSTONE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RR, 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 emergency repairs to the rental unit; an order allowing the tenant to deduct the cost of repairs, services or facilities from the rent; and, to recover the filing fee.

The hearing was conducted by teleconference on December 7, 2017. Both parties 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.

Settlement

During the hearing the parties reached the settlement on some of the issues raised in the Tenant's Application for Dispute Resolution. The terms of their agreement is recorded in this my Decision and Order pursuant to section 63 of the *Residential Tenancy Act* and Rule 8.4 of the *Residential Tenancy Branch Rules of Procedure*.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis. The terms of their agreement follow:

1. Within 30 days of the date of the hearing, namely, January 6, 2018, the Landlord shall hire a professional home window installer to replace the six upper windows in the living room.
2. At the same time as the upper living room windows are replaced, the Landlord shall request the professional home window installer to inspect and report on the flashing on the sliding door in the main living room as well as the patio door in the bedroom.

3. By no later than 14 days after the upper living room windows are replaced as provided above, the Landlord shall provide to the Tenant, a written report from the professional home window installer regarding any recommendations related to the flashing on the sliding door in the main living room as well as the patio door in the bedroom.
4. Should the Landlord not take steps to repair or replace the flashing on the sliding door in the main living room or the patio door in the bedroom, as recommended by the professional home window installer, the Tenant shall be at liberty to apply for further orders for repair and/or compensation pursuant to sections 32 and 65(1) of the Act.

Issues to be Decided

1. Should the Tenant be authorized to deduct the cost of repairs, services or facilities from the rent?
2. Should the Tenant recover the filing fee?

Background and Evidence

The parties attended a previous hearing on June 7, 2016. At that time Arbitrator Morrison ordered that the Landlord make numerous repairs to the rental unit including replacing the living room and bedroom windows by no later than June 30, 2016.

In the within hearing the Tenant testified that the Landlord completed all of the repairs (although not until the end of September 2016), save and except for replacing the six upper living room windows (which he describes as being set at a 30 degree angle). Since the date of the June 2016 hearing, the parties have disagreed as to whether the Order included replacement of those six windows. Documentary evidence submitted by the Tenant indicates the Landlord believed these to be “fixed panels” and therefore not “windows” as provided for in the June 2016 Decision. For the purposes of the Tenant’s submissions before me, he referred to those windows as the “upper living room windows”.

The Tenant alleges that due to the Landlord not replacing the upper living room windows, as ordered in June 2016, the windows leak, the rental unit continues to suffer from heat loss and mould has grown in the rental unit. Photos submitted by the Tenant confirm the presence of mould and water accumulation under the windows from leaking.

The Tenant submits that the windows are aluminum and were installed in 1989, such that they are 28 years old. The Tenant further submits that the lifespan of such windows is 15-20 years; in support the Tenant provided printouts from the internet confirming this information.

The Tenant submits that due to the Landlord not replacing these windows he has incurred excessive electricity costs, has had to deal with cleaning up water leaking in the rental unit as well as the accumulation of mould. He also submits that he has wasted a considerable amount of time communicating with the Landlord about this issue.

The Landlord’s agent confirmed that although the Landlord agreed to replace the upper living room windows in the within hearing it remains the Landlord’s position that they are “fixed panels” and therefore were not included in the June 2016 repair Order.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities, I find as follows.

I find that the six upper living room windows are windows as contemplated in the June 2016 Order of Arbitrator Morrison. Arbitrator Morrison made no distinction between the horizontal windows and the six windows which were placed on a 30 degree angle. In the Decision the Arbitrator referred to the windows in the bedroom and living room as being installed 27 years ago, as being made of aluminum and as being insufficient to meet the requirements of section 32(1) of the *Act*. I find it more likely than not that Arbitrator Morrison's Order included the replacement of the six upper living room windows.

I therefore find that the Landlord has failed to comply with Arbitrator Morrison's Order by failing to replace those six upper living room windows.

I accept the Tenant's evidence that the upper living room windows continue to leak and cause heat loss and mould issues in the rental unit. I also accept the Tenant's evidence that he has had to deal with these windows, in terms of increased cleaning and maintenance and that he has incurred increased electricity charges as a result of the insufficiency of these windows. It is also clear, based on the communication between the Tenant and the Landlord's representative, that the Tenant has spent a considerable amount of time trying to convince the Landlord to comply with the Order and replace the windows. I find that all of these factors have devalued the tenancy.

Section 65 of the *Act* allows me to reduce past or future rent in such circumstances; for greater clarity I reproduce the relevant portions of that section as follows:

65 ... (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:

... (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;

...

I accept the Tenant's submissions that \$200.00 per month is an appropriate sum to compensate him for the devaluation of this tenancy as a result of the Landlord failing to replace the upper living room windows. As the Landlord was to replace the windows by June 30, 2016, I find the Tenant is entitled to a retroactive and prospective rent reduction commencing July 1, 2016. As the hearing occurred on December 7, 2017 I find the Tenant is entitled to the sum of \$3,600.00 (\$200.00 x 18 months).

As the Tenant has been substantially successful I also award him recover of the filing fee for a total award of **\$3,700.00**.

Conclusion

The Tenant's Application for an Order for repairs to the rental unit was resolved by agreement; the parties agreed to the following:

1. Within 30 days of the date of the hearing, namely, January 6, 2018, the Landlord shall hire a professional home window installer to replace the six windows in the living room.
2. At the same time as the windows are replaced, the Landlord shall request the professional home window installer to inspect and report on the flashing on the sliding door in the main living room as well as the patio door in the bedroom.
3. By no later than 14 days after the windows are replaced as provided above, the Landlord shall provide to the Tenant, a written report from the professional home window installer regarding any recommendations related to the flashing on the sliding door in the main living room as well as the patio door in the bedroom.
4. Should the Landlord not take steps to repair or replace the flashing on the sliding door in the main living room as well as the patio door in the bedroom, as recommended by the professional home window installer, the Tenant shall be at liberty to apply for further orders for repair and/or compensation pursuant to sections 32 and 65(1) of the *Act*.

The Tenant's Application for a rent reduction pursuant to section 65 of the *Act* is granted. The Tenant is entitled to the sum of \$200.00 per month from July 2016 to December 2017 for a total of \$3,600.00 in addition to recovery of the filing fee for a total of **\$3,700.00**.

Pursuant to section 72 of the *Act*, I authorize the Tenant to reduce his rent payments until the full \$3,700.00 is recovered.

Should the Landlord not replace the six windows in the living room by January 6, 2018, as agreed upon in this hearing, the Tenant shall be permitted to hire a professional home window installer to replace the six windows in the living room, such cost to be recovered by further reductions in the rent payable.

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: December 14, 2017

Residential Tenancy Branch