



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP RP MNSD MNDC OLC RP PSI RR

Introduction

Both parties, a witness and a lawyer for the landlord attended the hearing and gave sworn testimony. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. Two Notices to End Tenancy were personally served, a 10 Day Notice dated October 12, 2017 to be effective October 22, 2017 and a One Month Notice to End Tenancy for cause dated September 28, 2017 to be effective October 31, 2017. The tenant filed an amendment to cancel these Notices and to increase their monetary claim to \$30,064.55. The tenant served the amendments on the landlord personally. 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) That the landlord provide facilities required by law pursuant to section 27;
- d) To suspend or set limits on the landlord's entry into the rental suite;
- e) To cancel both Notices to End Tenancy;
- f) To obtain compensation for loss of use of premises due to lack of repair;
- g) To obtain compensation for repairs done by the tenant;
- h) To obtain compensation for loss of peaceful enjoyment; and
- i) To recover the filing fee for this application.

Issue(s) to be Decided:

Is the tenant entitled to any relief in respect to the Notices to End Tenancy?

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 are they entitled to orders that the landlord do necessary repairs? Have they proved that the landlord through act or neglect has caused loss to them and they are entitled to compensation? If so, in what amount?

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 June 20, 2016 on a fixed term lease that was renewed on May 20, 2017 to June 30, 2018. Rent is \$4250 a month and a security deposit of \$2125 and a pet damage deposit of \$1000 were paid.

The tenant submits both Notices to End Tenancy should be cancelled. They deny there is cause to end the tenancy as they say the landlord knew about their air bnb and other guest rentals and impliedly consented by signing a subsequent lease in May 2017. They believe the rent for October 2017 should be waived due to the problems they have suffered due to lack of repair. They recounted major problems of a leaking roof, constant plumbing problems and a flood that made the lower floor unusable and flooded with sewage. They state a new sewage line is needed. Other problems were noted also. The gas fire pilot light needed fixing, the front walkway and steps are deteriorating and in need of repair.

The tenants claim compensation of \$30,064.25 itemized as follows:

1. \$1050.00 Ceiling repair and paint
2. \$697.95 Painting walls
3. \$157.50 to install lights
4. \$86.09 for door knobs
5. \$741.08 to install exterior lights
6. \$69.46 to repair upper bathtub
7. \$600 for handyman to fix doors (receipt missing)
8. \$25,500 refund of 6 months rent
9. \$131.52 for toner to print documents
10. \$44.09 for outdoor LED light
11. \$69.38 for door knobs
12. \$21.87 for shower parts for upper suite
13. \$125.39 for kitchen pantry shelves
14. \$23.41 for photocopies
15. \$20.14 for cleaning solution for the deck
16. \$21.12 for paper and staples for documents
17. \$33.24 for bathtub refurbish solution
18. \$519.75 for window cleaning

The landlord submits the tenant has not paid October rent or any rent since. He provided a monetary claim for \$24,544.84 which he acknowledged cannot be

considered today as this is the tenants' claim. His lawyer said they have filed an Application which is due to be heard in January 2018.

In respect to the compensation claimed by the tenant for the listed items, he stated the tenants did not have his permission to do this work and he did not promise to reimburse them for renovations or upgrades. He notes they were running an air bnb and renting to other numerous guests and they maybe undertook these items to improve their business. He described the house as 67 years old in relatively good condition but said the numerous persons staying in it have put undue strain on the plumbing. He alleged the flood from the toilet in the lower level was caused by a large item being flushed down the toilet. No plumbing report on this is provided in evidence and the tenant denies causing the damage.

On June 30, 2017, the tenants notified the landlord after midnight that after using the toilet in the basement, it flooded saturating the carpet in the hallway. They said the water appeared to contain sewage and asked for immediate attention for health and safety reasons. In the same letter, they note the roof needs replacement but they prefer it to be in early September due to their guests and needing to schedule. They note they have waited 6 months to have the front steps and walkway fixed as they are unsafe. On July 4, 2017, the tenant again wrote of the severe sewage concern. They note they had a drain clearing company there twice in the past year and spent \$588. As they owe rent for \$575, they say they will consider it even on this point.

In the July 4, 2017 letter, the tenant notes the stress they are experiencing, they cannot use the lower suite and they have had the kitchen ceiling open for over six months with no light in part of the room. The front porch is no longer safe and the main sewage line is so rusted, they have been told not to use toilet paper. The carpet, walls and vanity are laden with bacteria and need to be removed.

On July 5, 2017 the tenant notes in a letter that the restoration company has been there but they need authorization from the insurance company to proceed. The tenant noted the water removal people were there and put in a humidifier. She asks the landlord to get the insurance company authorization quickly. They note the noise from the development being built next door is significantly disturbing them and the landlord never informed them that this demolition and construction would occur.

In evidence is a letter from the landlord to the insurance company dated July 5, 2017 notifying them of the damage, saying the plumber has fixed the source of the problem

and the water has been dried. He asks that they assign an adjuster as soon as possible and continue the restoration to mitigate any health risks and further damage.

On July 19, 2017, the tenant advised the landlord that they still did not have use of the lower bathroom so guests cannot use the two lower bedrooms. They note that two city workers came to their door and told them there was a large pool of water developing in the yard next door and after tests, they determined it was coming from their premises. They gave an official notice to have it repaired immediately. On July 24, 2017, an invoice from a roofer service notes they pulled up the pad, added anti-microbial and set up equipment. They note all is dry except bathroom vanity and recommend removing it and affected walls in bathroom. On July 25, 2017 an invoice from a restoration company notes removing of carpets, baseboards and disposal.

The tenant submitted 'without prejudice' letter they had sent to the landlord. It is 6 pages long and the main points are summarized. She notes previous light fixtures had been removed and they hired an electrician to install exterior lights for safety. She states the landlord consented to this but not to pay for the work. She notes the fridge door needed repair and she had it done and the landlord reimbursed them. She says the electrical system is a major problem and it is difficult to prepare meals using only one appliance at a time. The Jacuzzi bathtub leaked into the kitchen, the ceiling had to be opened up and unskilled plumbers took 6 months to find and fix the leaks. Her own plumber came and fixed part of the problem but had difficulty with the correct gasket size since the landlord's plumber removed and threw out the original part. They had use of only half the kitchen for six months before the landlord had it closed in and sent an inept painter who splattered paint everywhere. The leaking water caused a short that blew the fuse for the kitchen so both the oven and stove needed to be reprogrammed which the landlord paid for in an offset against rent. The garage door continues to be a problem; it seems to work in the summer and not the winter so they suffered with the snow removal and scraping windows. The tenant noted the roof problem since fall of 2016, the landlord put a tarp on it and said it would be fixed in the spring. It is still not scheduled to be fixed. There were leaks in the powder room, the laundry room, the powder room toilet, the bathtub in the main bathroom became clogged and the tenants had to have the outlets snaked twice. The water and resulting damage caused mess in the tenant's office and significant disruption of her home office from which she runs a business. At one point there were two bathrooms in the house they could not use. The landlord's workers dug up the hydro line by mistake which caused significant problems to the tenants. They lost power and water for about a day and were stressed because hydro was threatening to turn off their power during the incident. The repair people came back also and threatened to cut it off because they

had not been paid. The lower level of the house is freezing at 12 degrees colder than the other floors. During this they did get a new wood porch. The shrubs have not been maintained as promised in their original lease.

The landlord spends much time in another country but he has hired an agent. The agent as witness said they do all the repairs as soon as possible when notified but it is difficult to schedule contractors who are very busy. They claim they have been diligent and responsive and allege that many of the problems arise from the excessive number of people using the unit as the tenants are operating it as an air bnb or short term rental.

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

Analysis:

In respect to the tenant's application to cancel the Notices to End Tenancy, I find section 26 of the Act provides a tenant must pay rent when due, whether or not the landlord complies with his obligations under the Act. I find the 10 Day Notice to End Tenancy was served because rent for October 2017 was not paid. I find it was never paid. Although a tenant might withhold rent pursuant to section 33 of the Act for emergency repairs, I find insufficient evidence that the tenant followed the required procedure under section 33 or that they withheld rent for emergency repairs. I find sufficient evidence to uphold the 10 Day Notice to End Tenancy. I find the tenancy ended on October 22, 2017 pursuant to the Notice. I dismiss the application of the tenant to cancel the 10 Day Notice. Section 55 of the Act provides an arbitrator must give an Order of Possession to the landlord when the tenant's application is dismissed. I find the landlord entitled to an Order of Possession which will be effective January 31, 2018. I have taken into account that the parties have another hearing scheduled in January.

Since the landlord has obtained an Order of Possession pursuant to the 10 Day Notice to End Tenancy, I find it irrelevant to consider the One Month Notice to End Tenancy.

Although the tenant has requested orders to repair be issued to the landlord, I decline to do this as their tenancy is ended.

In respect to their claim for compensation, Section 32 of the Act provides as follows:
32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) Complies with the health and 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.

Paragraph 32(1)(b) above is intended to take into account the fact that older units will not and are not expected to be of the same standard as a newly constructed unit and that the unit must only meet the standard of being suitable for occupation and comply with health, safety and housing standards required by law. For these reasons, older units sometimes rent for much less than newer units. I note in this case the rental unit is 67 years old but is in a very desirable location with rent of \$4250.

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.

I find the weight of the evidence is that the landlord neglected to repair some essential items and facilities in a timely way. I find the landlord was notified of a leak in the roof in the fall of 2016. While he may have been in another country, I find he had a duty to repair the roof. I find it reasonable (and the tenant acknowledged this) that roofing companies did not want to replace a roof in winter but I find if he landlord had been fulfilling his obligation, the roof would have been repaired by April 2017. I find he did not schedule this and in June 2017, the tenant advised him that they would prefer it be scheduled in September due to her business and guest scheduling. I find there was a 3 month delay due to landlord neglect (April to June) and a further 3 months that may be attributed to the tenant's preference. However, it is still not repaired so the delay of the additional 3 months is attributable to the landlord's neglect. I find the tenant entitled to

compensation for 6 months of the landlord's breach of section 32 by neglecting to fix the roof. Likewise, the Jacuzzi tub leaked and this led to loss of half of the kitchen on the main floor for 7 months. While the landlord sent a plumber, the plumber lost a gasket and the tenant had to hire her own plumber to get the leaks stopped. The tenants then had to wait for the ceiling to be closed and the finishing done. I find the tenant entitled to some compensation for the several months of delay in getting the leak stopped and the second half of the main kitchen functional again. I find the landlord has also neglected his duty to repair the walkway and steps to the home. While the tenants still gained entry, I find they felt unsafe in using them. I take note that the weight of the evidence shows that during this 13 months of delay in fixing the roof and kitchen and entrance, the tenants still lived in the home and conducted their businesses of air bnb , short term rentals and home business so had use of the major portion of their home with its facilities. I find them entitled to 10% rebate of rent for the 13 months of loss of peaceful enjoyment and inconvenience due to neglect of the landlord. This totals \$5525 rebate.

I find the evidence is that numerous toilets and sinks leaked in the home and the tenant engaged a roofer company several times to snake the pipes. I find in June 2017, the lower level toilet leaked and spilled out sewage as well. The landlord alleges these leaks were caused by multiple unrelated occupants using the home more intensely than a single family would. He and his agent also state they responded and had the leaks and sewage spillage repaired as soon as contractors were available. While some delay may have been caused by the landlord being out of town, I find the weight of the evidence is that he engaged an agent and plumbers and attended diligently to the repair. For example, the tenant notified him by email on June 30, 2017 of the downstairs flood and sewage but she notes by email on July 5, 2017 that the restoration company had come and other persons to remove water and put in a dehumidifier and the property manager was coming that evening. On July 5, 2017, there is evidence of an email from the landlord to the insurance company saying a plumber fixed the source of the problem and asking them to continue with restoration as soon as possible. Invoices dated July 24 and 25, 2017 are for removal and disposal of carpet and mildew and disinfectant treatment. On October 3, and 5, 2016, the tenant complained of dripping plumbing fixtures. She complained that one plumber sent by the landlord was incompetent and rude. On October 18, 2016, the landlord gave her permission to engage her own plumber and he would reimburse her by up to \$250 credit on the rent. I find insufficient evidence that the landlord through act ion or neglect breached the tenancy agreement or Act. I find the weight of the evidence is that he acted within a reasonable time to repair after notification. I find the tenants have not demonstrated any significant damage or monetary loss although it was inconvenient for them.

I find insufficient evidence to support the landlord's statement that the leaks and sewage leak was caused by the tenants or their use of the home. However, I find this is a 67 year old home. While section 32 requires the landlord to maintain the home, section 32(1) (b) notes the age of the home may be taken into account when considering whether it is suitable for occupation by a tenant. The tenants obviously regard it as suitable for their occupation as they state in their last 'without prejudice' letter to the landlord they have told the landlord numerous times they want a longer lease, up to a 5 year minimum. Even with all the problems they have suffered, they obviously find it suitable to occupy and stay.

In respect to the tenants' list of claims for monetary compensation, I find section 72 of the Act limits compensation for the process of dispute resolution to the \$100 filing fee. Therefore, I find the tenant not entitled to reimbursement for \$21.12 for paper and staples for documents and \$131.52 for toner to print documents as they are part of the process of preparing for the dispute.

I find the tenant engaged in some repairs and beautification of the house which likely made it more attractive for her guests, many of whom were paying for accommodation. I find insufficient evidence that the landlord ever offered to compensate her for these items although he may have had no objection to her doing the work. Therefore, I find her not entitled to reimbursement for \$1050.00 for Ceiling repair and paint, \$697.95 for painting walls, \$157.50 to install lights, \$86.09 for door knobs, \$741.08 to install exterior lights, \$69.46 to repair upper bathtub, \$600 for handyman to fix doors, \$44.09 for outdoor LED light, \$69.38 for door knobs, \$21.87 for shower parts for upper suite, \$125.39 for kitchen pantry shelves, \$20.14 for cleaning solution for the deck, \$33.24 for bathtub refurbish solution and \$519.75 for window cleaning. I find none of these items would be considered emergency repairs pursuant to section 33 of the Act and the tenant did not have the landlord's written consent and promise of reimbursement. I dismiss this portion of their claim. Although the tenant engaged a roofer company to clear drains, I find insufficient evidence of the causes of the blockages, whether they were due to landlord lack of maintenance or tenants' or guests' careless usage of toilets or sinks..

Regarding their claim for \$25,500 for a refund of 6 months rent, I find my jurisdiction is limited to \$25,000 total claim. However, as noted above, I consider this claim excessive as they provided insufficient evidence that the landlord's actions or neglect caused actual monetary loss to them. I found through delay in repair, the landlord had breached their right to quiet enjoyment, loss of some facilities for a limited length of time

and much inconvenience. They continued during repair to occupy the home and use it in their business. As stated, I find them entitled to \$5525 rebate of rent for the reasons stated above. I dismiss the rest of the claims of the tenant without leave to reapply.

Conclusion:

I dismiss the application of the tenant to cancel the 10 Day Notice to End Tenancy. The tenancy is at an end and I find the landlord entitled to an Order of Possession effective January 31, 2018.

I find the tenant entitled to a monetary award of \$5525 for rent rebate and to recover \$100 filing fees for this application as it had some merit. I dismiss the further claims of the tenant for damages without leave to reapply.

I HEREBY ORDER THAT the tenant may recover their monetary award of \$5625.00 by deducting it from rent owed to the landlord.

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 21,, 2017

Residential Tenancy Branch