



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes RP RR OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The parties confirmed service of the respective evidence submissions on file.

Preliminary Issue – Partial Settlement & Clarification of issues in dispute

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties expressed an interest and were successful in resolving a part of this dispute under the following final and binding terms:

- I. The parties agree that the tenant will, at his own cost, arrange for a mold inspection of the basement of the rental unit by an independent professional mold inspection company.

- II. The landlord agrees to reimburse the tenant for the cost of the mold inspection if a mold problem is found to exist.

Each party confirmed that this partial settlement was reached voluntarily and that they understood the terms of the agreement. The parties agreed that these particulars comprise only a partial settlement of this dispute.

The landlord also withdrew the issue of hot tub repairs from this application as the landlord has already completed necessary repairs to get the hot tub operational and further repairs are currently not necessary. I make no finding on whether or not the hot tub is a service or facility provided for under the tenancy agreement. If and when any future hot tub repair issue arises, the parties are free to make a new application at that point.

Outstanding Issue(s)

Is the tenant entitled to compensation in the form of a past/future rent reduction as the result of an inoperable motorized gate and should the landlord be ordered to make repairs to the gate?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy for this single family home began on June 15, 2017. The current monthly rent is \$3200.00 payable on the 1st of each month.

The tenant submits that the motorized security gate at the entry of the rental property has been inoperable as of September 13, 2017. The tenant submits the security gate was a principal reason for entering into the tenancy and they were provided with two remote fobs for the gate at the start of the tenancy. The tenant submits the rental property is in a secluded area and his wife is home alone much of the time. The landlord testified the large gate is very difficult to operate manually especially on the cold weather. The gate has to just be left open reducing the security of the home. The tenant first noticed an issue with the gate in early September 2017 as the motor would continue running even after the gate was fully opened or closed. His father and he looked at the gate but they were not able to determine the problem. A friend recommended replacing the motor and hardware. The landlord was notified of the issue

on September 15, 2017. The landlord original response was to operate the gate manually which was not a suitable solution for the tenant.

A few days later, the landlord arrived on the property with a new motor he had purchased online. The tenant and his father assisted the landlord in replacing the motor. The motor was not installed properly and the new motor blew. The gate has since not been repaired as the landlord has been insisting the tenant repair the new motor to its original condition. The tenant is seeking a reduction of \$200.00 per month of past and future rent until such time that the gate is repaired by the landlord.

The landlord acknowledged the tenant raised a concern with the gate on September 15, 2017. The landlord argues they attempted to replace the motor at the suggestion of the tenant's father. He took the new motor over to the rental property and the tenants stated they had the necessary tools to do the job. They stopped the installation part way as there was a missing part. The next day, the tenant's father advised he had the missing part. They finished the installation and when they tried to operate the gate, the motor was overloaded and blew. The landlord argues the tenant's should be liable to replace the blown motor.

Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the 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 the tenant.

Pursuant to section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

There is no dispute that the motorized security gate has been inoperable since September 13, 2017. The landlord acknowledged that he was first made aware of this issue on September 15, 2017. It was also not disputed that this motorized gate was operational at the start of the tenancy and the tenant was provided remote fobs at the start of the tenancy. As such, I find that an operational motorized security gate forms part of this tenancy.

As per subsection 32(1) of the Act, I find it is the landlord's responsibility to repair the motorized security gate. I dismiss the landlord's argument that the tenant should be liable for replacing the blown motor. The undisputed evidence was that the landlord and tenant together attempted to replace the motor. The landlord took the risk of permitting the tenant to assist with the repair rather than hiring a professional.

The tenant first made the landlord aware of this issue on September 15, 2017 and has since suffered a loss of security and inconvenience of manually operating the gate. As a result, I accept the tenant's claim and find the tenant has suffered a reduction in the value of the tenancy since September 15, 2017 in the amount of \$200.00 per month. I find the tenant is entitled to a reduction of past rent for the period of September 15, 2017 to January 31, 2018 in the amount of \$900.00 (1/2 month x \$200.00 + 4 months x \$200.00). **The tenant is entitled to a one time future rent payment in the amount of \$900.00.**

The landlord is hereby ordered to repair the motorized gate in a timely manner following the receipt of this decision. **The tenant is further permitted to reduce future rent in the amount of \$200.00 per month beginning on February 1, 2018** until such time as the repairs are satisfactorily completed. Once the motorized gate repairs are completed it is up to the landlord to provide written notice to the tenant that the repairs have been completed. Once written notice of completed motorized gate repairs is provided to the tenant, the \$200.00 future rent reduction is no longer applicable effective the next monthly rent due date following the receipt of the written notice of repair.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

The tenant is entitled to a one time rent reduction from a future rent payment in the amount of **\$1,000.00 (\$900.00 + \$100.00 filing fee).**

In addition, effective **February 1, 2018**, the tenant is permitted to reduce future monthly rent in the amount of **\$200.00** until such time as the landlord serves written notice to the tenant of the satisfactorily completion of the above ordered repairs.

If there is any dispute on whether or not any of the above referenced repairs entitling the future rent reductions have been satisfactorily completed, it is up to the tenant to

make an application to dispute the reinstatement of rent. The tenant is not permitted to make any future rent reductions after being served with written notice by the landlord that the ordered repairs have been completed.

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: January 03, 2018

Residential Tenancy Branch