



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT LRE PSF RP RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order limiting or setting conditions on the landlords' right to enter the rental unit; an order that the landlords provide services or facilities provided by the tenancy agreement or the law; an order that the landlords make repairs to the unit, site or property; an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of the application.

Both tenants and both landlords attended the hearing, and both tenants and one of the landlords gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established that limitations or conditions should be set on the landlords' right to enter the rental unit?
- Have the tenants established that the landlords should be ordered to provide services or facilities required by the tenancy agreement or the law?
- Have the tenants established that the landlords should be ordered to make repairs to the unit, site or property?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The first tenant (MLR) testified that this fixed term tenancy began on June 1, 2017 and expires on May 31, 2018, thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. The tenants are grandmother and granddaughter to each other, and the landlords are mother and daughter to each other.

Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$500.00 as well as a pet damage deposit in the amount of \$100.00, and both deposits are still held in trust by the landlords. The rental unit is one of 2 suites in the lower level of the rental home, and the landlords reside in the upper level. The other suite in the lower level is also tenanted. No one has provided a copy of the tenancy agreement.

The tenant further testified that mold showed up on a window in the rental unit, and the blinds, ledge and floor and wall were covered with mold. The tenant took down blinds and cleaned but didn't want to place the blinds back. The tenants share the laundry facilities and the tenants are entitled to do laundry on Thursdays. On the tenant's laundry day, the tenant put the blinds in the laundry room because the rental unit is very small and there was no storage space. The landlord got very upset and yelled at the tenants to get out, that the tenants were ruining her apartment, but the tenant explained about the mold on the blinds.

Also, on 3 occasions during the tenancy the landlord wouldn't open door to laundry room despite requests by the tenants. On each occasion, the tenant telephoned the landlords, knocked on door, and called the landlord daughter at work. The tenants did not get access and did the laundry for 3 weeks in bathtub.

The heat does not work in the back half of the rental unit. The floor is cold and the tenants have been using a small space heater. The tenant believes the rental unit is heated with hot water.

Also, in the tenant's granddaughter's bedroom, the window leaks to the extent that moisture spills onto the window ledge and floor to excess. The tenants keep a towel under the window which needs to be changed almost daily. The weep holes in the window are not operational. Photographs and video evidence have been provided for this hearing. The tenant testified that there are no problems with condensation creating puddling on the sills of other windows in the rental unit.

The tenant spoke to the local MLA who guided the tenant in preparing a letter for the landlords with respect to repairs required in the rental unit. The tenant put the letter in the landlords' mailbox, and it disappeared from there, however after 2 weeks the tenants had no response from the landlords. The tenant spoke with someone at the Residential Tenancy Branch who advised the tenant to hand-deliver a copy. The tenant and the landlord were outside the rental unit and the tenant wanted to give the landlord the letter so the tenant went into the rental unit to get it, and the landlord entered the rental unit and pushed the tenant and was very aggressive, saying she can enter the rental unit whenever

she wanted. The tenant's granddaughter witnessed it. The tenant attempted to usher the landlord out and as the tenant tried to close the door, the landlord put her foot in the door to stop it. The landlord had the letter in her hand, and the tenant was able to close the door. However, the repairs still have not been done.

On January 1, 2018 the landlords and a neighbour appeared at the rental unit, and the senior landlord screamed at the tenant about paying rent. The tenant told her it was in the mailbox and tried to close the door, however the landlord had her hand on the door. Once the tenant got the door closed, the landlords kept pounding on it. The gentleman with the landlords told the tenants that the water in the bedroom is caused by excess moisture in the air, and it's the fault of the tenants.

The landlords provided the tenants with a dehumidifier and a heater, however the tenants returned them. The dehumidifier was very noisy and had a warning about cancer and possible reproduction difficulties, and that particular model has been discontinued. The Residential Tenancy Branch told the tenant that she had no obligation to continue to use it. The heater was very big, and being concerned about the tenants' puppy, the tenants chose to use their small heater.

The landlords attended the rental unit again on February 13, 2018 with prior notice for a monthly inspection. They didn't ask any questions or tell the tenants anything or even look at the thermostat. The tenants occasionally keep the fans running in the kitchen and bathroom and open the bathroom window when showering, however the bedroom of the tenant's granddaughter is the furthest from the bathroom and not close to the kitchen, and that's where there is puddling.

The tenant also testified that a technician from Shaw Cable attended the rental unit because the tenants' phone and cable TV were disrupted, and the technician told the tenant that there was water in the walls and the tenant should notify the landlord, which she did. The technician had to replace heads on the wiring because the connections were damaged, which caused the outage. An email from the technician has been provided for this hearing.

The tenants seek an order that the landlords repair or replace the window in the bedroom and repair the heat. The tenants also seek damages in the amount of \$500.00 for 2 months of having no heat in the back portion of the rental unit. Also, due to the aggressive behavior of the senior landlord, the tenants seek an order that she not attend the rental unit and that only the junior landlord enter the rental unit when required.

The second tenant (KSR) testified that the window in her bedroom has only 1 weep hole and all others in the rental unit have 2. The tenant tested them by pressing on them. The

landlord had 2 contractors at separate times attend. The first man inspected with a flashlight and ran his fingers down the window and noticed leaking from condensation. There was no follow-up, but the tenant heard people outside on a few occasions prior to January 1, 2018. The contractor on January 1, 2018 said he couldn't fix anything. The second contractor noticed condensation but didn't have an answer; he didn't say anything and left. The photographs provided for this hearing were taken between November, 2017 and January, 2018.

The tenant also testified that she suffers from anxiety and the statement she provided for this hearing contains dates that were clearly wrong, but the tenant knows what she saw: that the landlord has been very aggressive towards the tenant's grandmother.

The landlord (WL) testified that the landlords confirmed that other rooms in the rental unit are fine which implies that the heat is operational and there is no evidence to the contrary. The landlords' obligation is to provide an operational system, which the landlords have done in compliance with by-laws and the *Residential Tenancy Act*. The tenants have full control of the thermostat.

The landlord also testified that 2 contractors inspected the window on the inside and outside, as well as the flat roof above. They removed the soffits and asked the senior tenant to look at it, but she declined. The first was on December 17, 2017 and the tenants were advised that due to excessive humidity the tenants should periodically open windows for ventilation, turn on exhaust fans in the kitchen and bathroom from time to time. The rental unit is 16 years old, which is the same age as the windows.

The landlord disagrees that the landlords should repair the lock on the other window and does not believe it is wear and tear; perhaps the tenant damaged it when taking down the blinds.

The landlord further testified that she purchased a "Hygometer" from Canadian Tire and measured the relative humidity and temperature in the rental unit. A photograph has been provided showing a temperature of 19.6 degrees and relative humidity at 59%. The landlord testified that Health Canada places relative humidity at 30%. The air is holding a lot of moisture and the tenants haven't opened windows or run exhaust fans as suggested on December 17, 2017. The landlord did not look closely at the weep hole in the bedroom window, however the tenants' photographs don't show it either. The tenants refused the dehumidifier and heater, and have not done anything to mitigate. Nothing was mentioned to the landlords about cancer until the landlords received the tenants' evidence package, however a fridge has the same chemicals. The landlord testified that the tenants are not deserving of any compensation in that they've allowed the rental unit to deteriorate.

With respect to the tenants' allegation of being pushed by the other landlord, the landlord submits that the dates in the tenants' testimony and evidence are inconsistent and sounds contrived. The landlord believes her mother was inside the rental unit, but does not believe the allegation.

Analysis

Firstly, dealing with the tenants' claim for repairs, the landlord disagreed that any are required. Each party questioned the other about professional opinions and neither party was able to provide any. I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements which puts the useful life of windows at 15 years. I am not satisfied that any condensation that builds up water as severely as shown in the photographs and digital images can be caused by the tenants' failure to open windows or keep fans running. The landlord testified that the windows are 16 years old, and I find that this particular window has outlived its usefulness as well as the lock on the other window. I order that the landlords replace the bedroom window, and the lock on the window that has broken off by March 22, 2018.

I accept the evidence provided by the landlords that the temperature is controlled by the tenants and that the meter was used which showed a temperature of 19.6 degrees. The tenant testified that the floor is cold, and that she believed the heat was provided by hot water. The tenants have not provided any evidence or testimony that all floors ought to be the same temperature, and it fluctuates from place to place in the floors with hot water heating. I am not satisfied that the tenants have established that it requires repair.

With respect to the tenants' application limiting or setting conditions on the landlords' right to enter the rental unit, the tenants both described an incident, and although the dates are questionable, I also note that the landlord who allegedly pushed the tenant chose not to testify, and the landlord who testified simply doesn't believe it but has no direct knowledge of it. The landlord didn't agree that the incident took place but did not give any submissions on how such an order might impact the landlords or why such an order should not be made. Both tenants testified as to the allegation of pushing, and one of the tenants testified that the senior landlord has also yelled at the tenant on other occasions. The *Residential Tenancy Act* specifies that:

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Given that there appears to be no reason for the senior manager to enter the rental unit as opposed to the junior landlord, I order that the senior landlord not enter the rental unit except as described in Section 29 (a), (d), (e), or (f) above.

The landlord did not dispute the tenant's testimony about doing laundry in the bathtub for 3 weeks and that the laundry day is Thursdays and the facilities are included in the rent. I order the landlords to ensure that the tenants have access on their laundry days.

With respect to the tenants' application to reduce rent for repairs, services or facilities agreed upon but not provided, the tenant testified that the claim is \$500.00 for each of 2 months that the tenants were without heat. In order to be successful, the onus is on the tenants to satisfy the 4-part test:

1. that the tenants suffered damages or a loss;
2. that the damages or loss suffered was a result of the landlords' failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenants made to mitigate the damage or loss suffered.

That means that I also consider by what measure, if any that the tenancy was devalued as a result of the landlords' failure to comply with the *Act* or the tenancy agreement.

The landlords provided the tenants with a space heater and a dehumidifier, which was not suitable to the tenants due to their size and/or noise. The tenants chose to use their own space heater, however having found that the tenants have not established that the heat needs repair, I cannot find that the tenants have established that any damages or loss suffered was a result of the landlords' failure to comply with the *Act* or the tenancy agreement. Therefore, the tenants' application for a reduction in rent is dismissed.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenants in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, I hereby order the landlords to replace the window in the bedroom and repair or replace the lock on the other window by no later than March 22, 2018.

I further order that the senior landlord not enter the rental unit except as provided in Sections 29 (a), (d), (e), or (f) above.

I further order the landlords to ensure that the tenants have access to the laundry room on each of the specified laundry days.

The tenants' application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: March 01, 2018

Residential Tenancy Branch