



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT LRE OLC RR

Introduction

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

- conditions to be set on the landlord's right to enter the rental unit pursuant to section 70 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62;
- a rent reduction for repairs, services or facilities agreed upon but not provided pursuant to section 65; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a reduction in rent?

Can the tenants recover the filing fee?

Background and Evidence

Testimony provided by the tenant explained that this tenancy began on November 1, 2017. Rent is \$1,500.00 per month and a security deposit of \$750.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants are seeking a reduction in rent of \$3,500.00. The tenants explained that on December 17, 2017 they began experiencing problems with the plumbing system in their rental unit. Following attempts to fix the problem on their own, the tenants discovered that all plumbing in the rental unit had become unusable and that a professional plumber was required to address drainage issues.

The tenants explained that they contacted the landlord on December 20, 2017 by email to inform them that a serious issue had developed in the plumbing system. Not having heard from the landlord, the tenants contacted a plumber who informed them that visit would be very

expensive. On December 21, 2017 the tenants contacted a second plumber who quoted a cheaper price. On December 23, 2017 these plumbing problems became worse and led to backups and significant flooding. An inquiry into the issue by the plumbing company revealed very significant issues related to the central plumbing. An extensive excavation on the property was required, leading to complete water shut off from December 17 to 23, 2017 and again on December 26 & 27. The tenants are seeking a rental reduction equivalent to \$100.00/day related to the loss of plumbing, \$100.00 for the cleaning associated with raw sewage present in the rental unit and a rental reduction of \$500.00 per month for the five months related to other issues present on the rental property (specifically the backyard) which the tenants argued the landlord had ignored; and for harassment they allegedly suffered at the hands of the property manager.

The landlord did not dispute that a significant plumbing issue had occurred in December 2017; however, he argued that the tenants did not contact him between December 17 and December 20, 2017 and that the tenants violated a term of the addendum to the tenancy agreement which stipulates, "tenant must take permission before anything done to house and its premises." The landlord said that a significant sum of money was spent to rectify the plumbing issue and disputed that the tenants should be entitled to any monetary award or rental reduction because he had adequately addressed the plumbing issue. The landlord continued by saying he was not aware of any other problems related to the tenancy and disputed that his property manager had failed to act professionally towards the tenants.

Analysis

Section 65 of the *Act* states, "If the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may order that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility as ordered by the director" and "that any money paid by a tenant to a landlord must be deducted from rent."

The tenants applied for a rental reduction of \$3,500.00 related to a reduction in services related to plumbing issues that arose in December 2017. The landlord acknowledged a major problem had occurred during this time and that significant work was required on the property to address the plumbing issue. The landlord argued that the tenants had violated the terms of the tenancy agreement by taking matters into their own hands, had failed to adequately inform him of the plumbing issue and that the plumbing issue was dealt with as quickly as possible.

After having considered the oral testimony of both parties and having reviewed the significant volume of evidence submitted to the hearing, I find it irrefutable that the tenants were through no fault of their own, without the use of plumbing for nine days in December 2017.

Section 27(2)(b) of the *Act* states, "A landlord may terminate or restrict a service or facility, if the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the

tenancy agreement resulting from the termination or restriction of the service or facility.” I find that the tenants suffered a loss as a result of plumbing issues related to the property in December 2017 and I find the tenants’ actions related to the property to be reasonable. The tenants did not attempt to perform any major alterations or significant repairs to the plumbing and merely undertook efforts which they felt would save the landlord money. Ultimately, as the evidence indicated, the scale of plumbing works was significant and a major excavation was required to address them. I will therefore award the tenants a one-time rent reduction of \$1,000.00 representing the loss of plumbing for December 17 to 23, 2017 and December 26 & 27, 2017.

The tenants have also applied for a rental reduction of \$2,500.00 equivalent to \$500.00 per month for five months, along with an Order directing the landlord to comply with the *Act* and setting limits on the landlord’s right to enter the rental unit.

The tenants argued that they had suffered harassment and unnecessary invasions of privacy from the landlord’s agent, and that their numerous complaints related to the surrounding property and backyard have been ignored. After reading the correspondence sent by the tenants to the landlord that was submitted by the tenants as part of their evidentiary package and having considered the oral testimony of both parties, I decline to make an Order directing the landlord to comply with the *Act*, setting limits on the landlord’s right to enter the rental unit, or to reduce the rent any further than was already ordered. Many of the issues which were raised by the tenant in a letter dated April 23, 2018 fall beyond the scope of the landlord’s duties. Furthermore, I accept the landlord’s testimony that the structural issues identified by the tenants will be addressed when adequate funds are located. In addition, conflicting testimony was raised by the parties related to the actions of the landlord’s agent, and I find that insufficient evidence was presented at the hearing that the landlord’s agent had harassed the tenants.

The landlord is reminded that a tenant has a right to quiet enjoyment, and that a landlord’s right to enter a rental unit is restricted by section 29 as follows:

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).

As the tenants were partially successful in their application, they may recover the \$100.00 filing fee associated with this application.

Conclusion

The tenants may withhold \$1,100.00 from a future rent payment on **ONE** occasion in satisfaction for a rent reduction of \$1,000.00 along with a return of the filing fee.

The tenants' application for Orders directing the landlord to comply with the *Act*, and for conditions to be set on the landlord's right to enter the rental unit is dismissed.

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: July 18, 2018

Residential Tenancy Branch