



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAPLE PACIFIC REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, FF

Introduction

On August 22, 2018, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- for an order that the Landlord make repairs to the rental unit.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenants and Landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to make repairs to the unit?
- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 15, 2017, as a one year fixed term basis that can continue thereafter on a month to month basis. Rent in the amount of \$3,800.00 is due by the first day of each month. A security deposit of \$1,900.00 was paid by the Tenants to the Landlord.

Repairs

The Tenant, MR. C.G testified that on January 31, 2018, a radiator leak on the top floor of the unit caused damage to the ceiling and walls below. The Tenant testified that the damage caused by the leak has not been repaired. The Tenants are seeking the repair of base moulding in the master bedroom and grease stains on the carpet near the radiator cleaned or replaced. The Tenant also testified that he wants a water stain on the ceiling of the second level bedroom repaired. The Tenant also requested that the main living room ceiling has two small bubbles that need repair. The Tenants provided photographs of the ceilings and radiator.

The Tenant testified that the air conditioning unit needs to be repaired. The Tenant submitted that the problem was reported to the Landlord on June 18, 2018. The Tenant submitted that On August 18, 2018 the air conditioning unit was repaired; however it broke again the same day. The Tenant submitted that the Landlord was informed on August 12, 2018. The Tenant submitted that the Landlord told him that he would have it repaired by the people responsible for the warranty. The Tenant testified that they would not be using the unit now, but they want it repaired for future use.

In reply, the Landlord testified that the leak from the radiator was repaired by a plumber the day after he was informed of the issue. The Landlord testified that the stain on the carpet was caused by the internal fluid from the radiator.

The Landlord submitted that the Tenants have never requested that they come and clean the carpet. The Landlord agreed that he will have someone attend the unit and clean the carpet within two weeks of this Decision.

The Landlord testified that the moulding the Tenant referred to is 2 inches by 6 inches. The Landlord agreed to have it repaired or replaced.

The Landlord testified that there is a small water stain on a lower bedroom ceiling. The Landlord testified that it is a minor stain and hard to see. He testified that it is not causing any damage or loss to the Tenant.

The Landlord testified that the Tenants have never asked the Landlord to repair the ceiling. He testified that the two bubbles on the Livingroom ceiling are minor and do not require repair. He testified that it is not reasonable to fix the ceiling. He submitted that it does not present a health or safety risk and the Tenants are not suffering any damage or loss.

The Landlord testified that the air conditioning units are maintained by the property strata. The Landlord reports the problem to the strata and the strata arranges the repair with the warranty people. The Landlord testified that he reported the air conditioner unit to the strata on August 9, 2018.

Compensation

The Tenant testified that Mr. K.G runs a business located out of town, but he stays at the rental unit one week per month.

The Tenant submitted that the temperature in the unit got out of control. The Tenant submitted that the temperature on July 9, 2018, was 33 degrees Celsius. The Tenants provided a photograph of a thermostat showing 91 degrees F.

The Tenant testified that he and his brother were forced to move out of the rental unit. He testified that he stayed with his girlfriend from June 18, 2018, until August 31, 2018. He testified that he was not able to study in his own home.

The Tenant testified that Mr. K.G. was forced to book hotel accommodation. The Tenants provided invoices ranging from April 2018, to August 2018. The Tenants are seeking to recover the hotel costs.

In reply, the Landlord testified that the temperature was not high during the period of time that the Tenants are seeking compensation. The Landlord provided documentary evidence of temperature charts that show the daily temperatures for the months of May, June, July and August 2018. The Landlord submitted that during the time period May 14 -18 that the Landlord is claiming the temperature was 18 – 20 degrees and on June 11, 2018, the temperature was 18 degrees.

The Landlord submitted that the burden to prove the claim rests with the applicant/Tenants, and they have failed to prove a loss due to the loss of use of the air conditioner.

The Landlord testified that he previously offered the Tenants compensation in the amount of \$200.00 for each month for the loss of the air conditioning.

The Tenant responded by saying that the offer of \$200.00 was inadequate due to the inconvenience.

Analysis

Section 7 (2) of the Act provides that a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the Act states that a Landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, 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.*

Section 65 of the Act states that 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 past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Residential Tenancy Policy Guideline #16 Claims in Damages states that if a Tenant is deprived of the use of all or part of the premises through no fault of their own, the Tenant may be entitled to damages, even where there has been no negligence on the part of the Landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

Repairs

I find that the Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and makes it suitable for occupation.

I order the Landlord to complete the repairs to the carpet and moulding as agreed at the hearing.

With respect to the repairs of the small water stain and bubbles on ceilings, there is insufficient evidence from the Tenants to establish that the small stain and bubbles present a health or safety risk, or make it unsuitable for occupation. I decline the request for a repair order on these items.

The Landlord is ordered to have the air conditioning unit repaired. The Tenants want it repaired for future use. The Landlord is cautioned that failure to provide a working air conditioning unit may result in future loss for the Tenants. The Tenants are at liberty to reapply for compensation if the Landlord fails to have the unit repaired or replaced prior to it being needed by the Tenants.

Compensation

I find that the Tenants suffered a loss of use of the air conditioning unit from June 18, 2018, onwards. I find there is insufficient evidence from the Tenants to support that they suffered a loss to the extent that they needed to stay in a hotel. I find that there is little evidence that the Tenants attempted to minimize loss by reporting the unliveable temperatures to the Landlord throughout the period in question. I also find that the Tenants have provided insufficient evidence that the temperatures were unbearably high during the time period they are seeking compensation. I also note that the Tenants appear to be seeking compensation for hotel stays in April and May, prior to when they reported the air conditioner problem to the Landlord.

I find that the Tenants are entitled to be compensated for the loss of the air conditioning unit from July 18, 2018, until September 30, 2018. I find that September 30, 2018, is the end of the summer season, and it is reasonable that the Tenants would not be using air conditioning after this date. I award the Tenants the amount of \$200.00 per month for a total of \$490.30.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were partially successful in their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I authorize the Tenant to deduct the amount of \$590.30 from one (1) future rent payment.

Conclusion

The Tenant's application was partially successful. I order the Landlord to complete the repairs as agreed in the hearing within two weeks of this Decision.

The Tenants are awarded compensation in the amount of \$490.30 for the loss of use of the air conditioning unit from July 18, 2018, until September 30, 2018. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I authorize the Tenants to deduct the amount of \$590.30 from one (1) future rent payment.

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: November 5, 2018

Residential Tenancy Branch