Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP

Introduction

This is an application by the tenants under the *Residential Tenancy Act* ("the *Act*") for the following:

- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65(1);
- An order for regular repairs pursuant to section 32 and 65(1); and
- Reimbursement of the filing fee in the amount of $100.00 pursuant to section 72.

The tenants attended. The landlord's agent attended ("the landlord"). The landlord acknowledged receipt of the tenants' Notice of Hearing and Application for Dispute Resolution. The tenants acknowledged receipt of the landlord's materials. I find the parties served each other in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to the following:

- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65(1);

- An order for regular repairs pursuant to section 65(1); and
- Reimbursement of the filing fee in the amount of $100.00 pursuant to section 72.

Background and Evidence

The parties agreed on the following. They entered into a fixed term tenancy of 2 years beginning May 1, 2016 ("the lease agreement") at monthly rent of $2,850.00. The tenants entered a copy of the lease agreement as evidence. The agreement states as follows (underlining added):

> *The original rent for the property is $3000. It is reduced to $2850 with the tenant's agreement as follow:*
>
> - *The tenant will be responsible for repairs which are of cosmetic nature.*
> - *The tenant will be responsible for some repairs and maintenance, such to be agreed upon with the property manager.*
> - *The above repairs shall not exceed the total of $1500 for the duration of the two year tenancy.*

The lease agreement included a clause that "no additional people [other than the named tenants] may live in the property without prior written approval from the landlord"; also, no sublet or overnight guests for more than seven consecutive days were permitted.

At the beginning of the tenancy, the tenants paid a security deposit of $1,450.00 and a key deposit of $200.00, together being $1,650.00 and referred to as "the deposit", which the landlord holds.

Following the expiry of the fixed term lease agreement, the parties entered into a 1-page month to month tenancy effective May 1, 2018 which stated that rent was increased to $2,964.00 and the terms of the lease agreement continued to apply. The tenants submitted an unsigned copy of the 1-page agreement as evidence.

The tenancy is ongoing. The unit is a 3-storey house. The tenants testified the house is "old and falling apart". The lease agreement included fixtures, such as two ranges, one of which was in the basement at the beginning of the tenancy.

During the tenancy, the tenants sub-let the basement. The tenants stated the landlord knew the tenants were doing this as the tenants needed the money to pay the rent. The landlord denied that the landlord knew about the sub-letting and stated the sub-letting was in violation of the terms of the lease agreement.

The tenants submitted a list of repairs which they testified they sent to the landlord by email on October 26, 2018, November 14, 2018 and January 8, 2019; they also tried to reach the landlord by telephone. The agent representing the landlord at the hearing did not acknowledge receipt of the list of repairs. She stated she is very busy and received many emails.

During the hearing, the landlord agreed to carry out some of the repairs requested by the tenants by May 31, 2019 as follows:

- Repair of back steps to the unit
- Inspection and testing of smoke detectors
- Cleaning and maintenance of all gas fireplaces in the unit including checking for gas leaks
- Repair of one downstairs window that does not lock

During the hearing, the landlord refused to carry out other repairs requested by the tenants as follows:

- Installation of two light fixtures on the exterior part of the home
    - Tenants stated these light fixtures had been inspected by the landlord's electrician and were diagnosed as broken and in need of replacing;
- Repair of the jetted tub in the master bedroom
    - Tenants stated the jets no longer work to push water into the bathtub
- Repair of 3 closet doors
    - Tenants stated these do not close properly or have come completely off the tracks

The landlord explained the refusal to carry out certain repairs as mentioned immediately above. She stated that the tenants were responsible under the terms of the lease agreement as referenced above for repairs "which are of a cosmetic nature"; these repairs that the landlord refused to carry out are of a "cosmetic nature" and are therefore the tenants' obligation.

The tenants disagreed with the landlord's position. They stated that the original lease, for a fixed term of two years, had expired. The term requiring them to perform repairs of a 'cosmetic nature' had expired with it. The landlord had raised their rent from $2,850.00 to $2,964.00 in May 2018 and the tenants were not getting a $150.00 reduction for the rent any longer.

Also, the tenants stated that these repairs are not cosmetic, but are structural; they involve attachments to the house, and the landlord should properly be responsible for their repair.

The parties disagreed on whether the tenants had carried out repairs in the first two years of the tenancy and what the value of those repairs were. The tenants testified they had done repairs of a value more than $1,500.00. For example, they stated they had repaired flooring by installing tiling at their own expense; they had also installed a dishwasher in the basement. The landlord maintained that these were not "repairs" but were property improvements which the tenants did to attract tenants to the illegal basement suite they were sub-letting without the permission or the knowledge of the landlord.

The parties agreed that the City in which the unit is located notified the landlord that the tenants were renting an illegal suite in the basement in July 2018. The city ordered that the range be removed, and the suite no longer rented until the suite complied with city by-laws. In following the City's order, on July 2018, the landlord removed the range from the basement and the tenants stopped sub-letting the basement.

The parties agreed the landlord cannot return the range to the basement because of the requirement by the City that it be removed. The tenants request reimbursement for the loss of the second range in the amount of $500.00 a month commencing July 1, 2018.

The landlord denied that the tenants are entitled to any reduction in rent due to the loss of the second range. The landlord stated that the range was only useful to the tenants if they were subletting the basement, which was not allowed in the lease agreement, by the landlord or by the City. In short, the landlord said the tenants are the authors of their own misfortune; the tenants' sub-letting the basement was a by-law infraction which led to the removal of the range. The landlord maintained the landlord had not been in breach of the tenancy agreement, the *Act* or any regulation and as a result there should not be a reduction in rent for the loss of the range.

The landlord submitted evidence of current market rental rates for similar accommodation to illustrate that the current rent is in keeping with, or better than, present rates for comparable accommodation. The landlord testified the tenants are still getting a rent advantage and are paying $150.00 a month less than the going rental rate.

Analysis

The parties submitted considerable testimony and evidence in the 83-minute hearing. I will not refer to all the evidence. Only material, relevant and admissible portions will be referenced.

The tenants claim an order for a rent reduction and an order compelling the landlord to perform repairs. Each will be examined in turn.

Rent reduction

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 65(1) of the Act allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if a determine that there has been “a reduction in the value of a tenancy agreement”. The section states that if an Arbitrator finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the Arbitrator may order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. the section reads in part as follows:

> ***65*** *(1) … if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*
>
> > *(b) 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;*
> > *(c) that any money paid by a tenant to a landlord must be*

(i) repaid to the tenant,
(ii) deducted from rent, or
(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

(f) 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 provides guidance in determining the value of the damage or loss under such circumstances. This guideline notes, "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due."

The parties agreed the lease agreement included two ranges. The parties also agreed that the second range was removed following a valid complaint to the City that the tenants were operating an illegal suite in violation of City by-laws and the landlord is prevented from returning the range further to an order from the City.

As discussed, the tenants asked for $500.00 a month rent reduction beginning with July 2018 when the second range was removed from the unit. The landlord stated the tenants are responsible for the removal of the second range because they were allowing unauthorized occupancy of the unit without the permission or knowledge of the landlord and in violation of City by-laws.

In considering the evidence of the parties, I find the tenants have failed to establish on a balance of probabilities that they are entitled to a rent reduction for the removal of the second range from the unit. I find the tenants themselves are responsible for the removal of the range by operating an unauthorized suite which came to the notice of the City. I find the City directed the removal of the range, as agreed by both parties. I find the landlord cannot return the second range to the unit as this would violate directions from the City. I find the tenants have not established that the landlord has failed to comply with the *Act*, the regulations or the lease agreement.

I therefore dismiss this aspect of the tenants' application without leave to reapply.

Repairs

Section 32 of the *Act* states that a landlord must provide and maintain the unit in a state of repairs that complies with health and safety standards and makes it suitable for occupation by a tenant. The section reads in part:

> ***32*** *(1) 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.*
>
> *(2)…*

Residential Tenancy Policy Guideline 1: Responsibility for Residential Premises provides guidance on the landlord's responsibilities.

> *The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property….*
>
> *Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant*

As the landlord has consented to carry out the following repairs, I grant the tenants an order that the landlords are required to conduct the following repairs before May 31, 2019, the date agreed to by the landlord:

- Repair of back steps to the unit
- Inspection and testing of smoke detectors
- Cleaning and maintenance of all gas fireplaces in the unit including checking for gas leaks

- Repair of one downstairs window that does not lock

I accept the tenants' evidence they have repeatedly asked the landlord to carry out the repairs.

In considering the evidence of the parties, I find the tenants have established on a balance of probabilities that they are entitled to an order that the landlord be compelled to carry out the other repairs requested. I find the agreement between the parties that the tenants would do "cosmetic repairs" expired when the fixed term tenancy agreement expired. I find it was not intended by the parties to be an ongoing, endless responsibility of the tenants. I find the parties agreed to an increased rental when they negotiated the terms of the present month-to-month tenancy and the reduction of $150.00 a month was no longer a term of the lease agreement.

Secondly, I find the repairs requested by the tenants are not "repairs of a cosmetic nature". They are repairs necessary from "reasonable wear and tear" and not from any damage caused by the tenants. While no evidence was submitted as to the age of the items for which repairs are requested, I accept the undisputed evidence of the tenants that the building is old, and the unit would require repairs from time to time in the normal course of events. I find these are repairs which are the landlord's responsibility to carry out within the meaning and intention of the *Act* and *Guideline*.

Filing fee

As the tenants have been partially successful in their application, I award the tenants reimbursement in the amount of $100.00 for the filing fee which may be deducted by the tenants from their rent on a one-time basis only.

Conclusion

The tenant's application for a rent reduction is dismissed without leave to reapply.

The tenants' request for an order for repairs is granted. I order the landlord, at the landlord's own cost, to carry out and complete before May 31, 2019 the following repairs to assure proper working order, the first four listed items having been agreed to by the landlord at the hearing:

1. Repair of back steps to the unit
2. Inspection and testing of smoke detectors
3. Cleaning and maintenance of all gas fireplaces in the unit including checking for gas leaks
4. Repair of one downstairs window that does not lock properly
5. Installation of two new light fixtures on the exterior part of the home
6. Repair of the jetted tub in the master bedroom
7. Repair of three closet doors

In the event the landlord does not complete the repairs within the timeline directed, I order that the tenants may reduce the rent by $300.00 a month commencing June 1, 2019 until all the repairs are completed. In the event of dispute between the parties as to the completion of the repairs, either party may apply for a determination as to the landlord's compliance with this decision.

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: April 15, 2019

Residential Tenancy Branch