



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FRASER PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Code ER, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to have the landlord make emergency repairs to the rental unit, for a rent reduction and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary issues

At the outset of the hearing the tenants indicated that they were served with a notice to end tenancy and vacated the property on or about June 30, 2019.

As the tenants have vacated the rental unit I find it not necessary to consider whether emergency repairs are required. Therefore, I find the only issue to determine is whether the tenants are entitled to a rent reduction in the form of a monetary order.

Issues to be Decided

Are the tenants entitled to monetary compensation?

Background and Evidence

The parties agreed that the tenancy began in October 2015. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenants paid a security deposit of \$1,100.00. The tenancy ended on or about June 30, 2019.

The tenants confirm at the hearing that they are seeking a rent reduction in the amount of \$325.00 for the month of January 2019, as they were only able to use two of the three bathrooms in the rental unit.

The tenants testified that the roof was leaking causing some water damage to the main bathroom upstairs and lower bathroom. The tenants stated that because they had a mould report completed and mould was detected that they were unable to use the two bathrooms.

The tenants testified that the floor in the bathroom was removed in January 2019, and that is when they discovered the black mould.

Filed in evidence is a mould report.

The landlord testified there was a leak in the roof, which they had the roof repaired. The landlord stated that the male tenant is a contractor and offered to fix the bathroom and be paid for the material and labour.

The landlord testified that they agreed to have the male tenant do the work as it was reasonable. The landlord stated that they asked the tenant on several occasion on how the work was going; however, they would respond that they have not completed the work. The landlord stated it was the tenant that removed the floor when they started the work on the bathroom.

The landlord testified that the mould report is dated April 11, 2019, and any mould that was likely found was from lack of the tenant completed the job they were hired to do.

The male tenant testified that they were hired to do the repaired. The tenants stated that in February 2019, the landlord told them to stop all work.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Landlord and tenant obligations to repair and maintain

- 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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, there was a leak in the roof that the landlord had repaired. The leak caused some damage to the main bathroom. The tenant who is a contractor made an agreement with the landlord in December 2018, to make the repairs and both materials and labour would be paid to the tenant by the landlord.

I find the tenants' position of seeking a rent reduction for January 2019, or any subsequent month is unreasonable as the male tenant was hired by the landlord to make the repairs in December 2018, and should have made the repair as soon as they were hired to do the job, especially if they believed their family was at risk.

I find it was a personal choice of the male tenant not to make the repairs in a reasonable timeframe, not the landlord's. The male tenant could have told the landlord that they were no longer willing to complete their agreement, which they did not do.

Further, the mould report is dated April 11, 2019, which is after January 2019. I find it just as likely any mould that was found on April 11, 2019, was from the male tenant not doing the work that they were hired to do in the bathroom in December 2018.

I also note the mould report does not state that there is a health or safety risk, rather a moderate problem that is greater than 10 square feet and less than 100 square feet. There is nothing in the report that says the two bathrooms are unusable.

I find the tenants have not proven a violation of the Act and any loss of use was from their own action of not completing the work they were hired to do.

Based on the above, I dismiss the tenants' application. Since the tenants were not successful with their application, I decline to award the cost of the filing fee.

Conclusion

The tenants' application 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 10, 2019

Residential Tenancy Branch