



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT, OLC, RP, RR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

1. For emergency repairs;
2. For an order directing the Landlord to comply with the Act, regulation or tenancy agreement;
3. For regular repairs;
4. For an order to reduce the rent by \$200.00 per month for six months for repairs; and
5. To recover the cost of his filing fee.

The Tenant and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

The Tenant said he served the Landlord with his Application and documentary evidence in person on May 16, 2019. The Landlord was not in attendance at the hearing, and the Agent said that he did not have the Tenant's photographic evidence before him. The Agent was the first to refer to the Tenant's submissions as having photographs; therefore, I find it odd that the Agent would know about the photographic evidence, if the Landlord did not receive it from the Tenant. Based on all the evidence before me overall, I find it more likely than not that the Tenant served the Landlord with the Tenant's full evidence package, and that the Landlord may not have provided it to the Agent. As such, I find it administratively fair to consider the Tenant's submissions before me in full.

The Tenant agreed that he had received the Landlord's documentary evidence; therefore, I find that the Landlord's full evidence package is before me for consideration.

In the course of the hearing, the Tenant acknowledged that the Landlord had arranged for the emergency repairs to be completed by replacing the back deck at the rental unit with a new one. Accordingly, the Tenant advised that he has withdrawn his first three claims in the Application listed above.

Issue(s) to be Decided

- Is the Tenant entitled to an order for rent reduction pursuant to section 65 of the Act, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 10, 2013, with a monthly rent of \$1,435.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$600.00 and, and a pet damage deposit of \$600.00 for each of two dogs, for total deposits of \$1,800.00.

I caution the Landlord that pursuant to section 19 of the Act, "a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of half of one month's rent payable under the tenancy agreement." Accordingly, the Tenant paid the Landlord \$365.00 too much in deposits, based on the current monthly rent paid by the Tenant.

The Tenant testified that he experienced issues with the back deck of the residential property. He said it has been fixed as of June 18, 2019; however, he said:

It took an extremely long time to do this. It was first a problem – the deck became a problem - when it began to deteriorate to a point of concern, as of April 2017. In general, I feel like I've been treated unfairly, and there's been a general lack of respect for my tenancy rights and safe usage of my space. It's unfair that I had to file an Application to make my Landlord follow up with the law.

The Tenant said:

The back door to the rental suite is the main entrance. The parking's back there, the backyard – that's our entry point 100% of the time. The deterioration meant we couldn't use it for pleasure or barbecuing or meals. I had to restrict access to much of the deck, so my pets and my young daughter wouldn't go into the area. I put up a narrow gate that allowed us access to our primary entry.

The Agent said that there is also a front door to the rental unit, even though the Tenant said that the back door off the deck is the main entrance. "It's convenient, but the main entrance is the front entrance of the building. It's not the only entrance."

The Tenant said that the holes developed to a dangerous level in November 2018, a time of peak moisture and darkness. The Tenant said: "My feet started to go through at that time of year. That's when verbal discussions with [the Landlord] stepped up in frequency and severity. He may have been travelling at the time, but it quickly progressed in the number and size of the holes. I'm back-dating six months from the Application when things were extremely dangerous."

The Tenant said he had verbal and text communications with the Landlord dating back two years about having the deck repaired. The Tenant included a text conversation he had with the Landlord on February 16, 2019, in which he said: "the back patio is rotten and my foot has stepped through it. It needs to be replaced or resurfaced before someone is injured." The Landlord's reply was: "I'll ask my handyman [M.] ["Handyman"] to drop by to get it repaired when the weather is getting warmer and dryer."

The Tenant said:

I have email references to the text the previous day, which note my concern with [the Handyman], who had done general repairs in suite, and I questioned his general ability. For something as serious as the back deck repairs, I had some

concerns. I pointed that out to [the Landlord], but there was no response from the Landlord. [The Agent] wasn't in the picture until May 27 [2019], after I filed this Application.

The Agent confirmed that he started to work for the Landlord at the end of May 2019. The Agent advised that the Landlord travels to Asia at times and might have been away during part of the period in question in this matter.

The Tenant said he received a text from the Handyman on February 18, 2019, saying that he could put in a temporary piece of plywood on the deck. The Tenant said he was concerned about the structural components holding up the deck and the growing danger of this deck. He said wet weather does not prevent other construction projects from going ahead, so he did not understand why weather would prevent the Landlord from getting the work done on the deck to make it safe for the Tenant's family.

The Tenant said:

With no notification, no follow-up from [the Landlord] whatsoever, I come home to find very small square components of mixed wood material patched in a poor manner to the largest hole. I did verbalize this to [the Landlord], but I didn't submit that as evidence. I made it clear that this would not suffice. One of the pieces fell out. It was slippery and dangerous and left gaping gaps. As expected, it was a very poor job, per my experience with [this Handyman]. I made [the Landlord] aware of this and that more holes were developing. We were still using the deck as access to rental unit. Rot was happening very rapidly through February, March and April [2019]. So in order to get some action, I filed an Application for repairs, and the submission of that Application spurred the Landlord to have the deck fixed on June 18 [2019].

The Agent said the Tenant should have contacted the Landlord right away when the problem arose. He said that after March 2019, "we have no knowledge of him contacting us about repairs. Our contractor said it was safe, which was our goal. We made it safe. It was dry weather in March and April. If something had broken through he should have contacted us right away. We would have fixed it. It's all subjective and based on your standards. We learned about the holes in the dispute letter."

The Tenant submitted photographs of the deck in March 2019 showing four large holes in it. The Tenant placed a standard outdoor chair near one of the holes for context to show the size of the holes. He also submitted a photograph of a piece of rotting wood

that he said fell off from underneath the deck.

The Tenant said that the condition of the deck restricted its use for his family and friends, and that he had several conversations with the Landlord about what should be done about it.

The Agent said the Landlord's Handyman "fixed the holes and made it safe in March 2019. It might not have looked nice cosmetically, but our goal was to make it safe."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

First, I find that the Landlord overcharged the Tenant by \$365.00 in security and pet damage deposits, contrary to section 19 of the Act. Pursuant to section 19(2) of the Act, I find that the Tenant is allowed to recover this amount by applying this overpayment as a deduction to the Tenant's rent. I award the Tenant \$365.00 from the Landlord for the overpayment of the security deposit.

Further, landlords and tenants each have obligations to repair and maintain the rental unit under the Act. Section 32 of the Act states:

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.

[emphasis added]

I accept the Tenant's evidence that the back deck had deteriorated to the point of being dangerous. I find that the Handyman's work was insufficient, given the degree of deterioration and the Tenant's evidence of the quality of the Handyman's repairs. Section 27(1) of the Act outlines a landlord's obligations regarding restricting services or facilities:

Terminating or restricting services or facilities

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.

I have considered the testimony and other evidence of the Tenant and the Agent, including the degree of disrepair the deck, as evidenced by the March 2019 photographs. I find that the Tenant has provided sufficient evidence to support that the Landlord failed to fulfill his obligations as required by section 32 of the Act. I find that the delay in repairing the deck properly was unreasonable in the circumstances and that as a result, the Tenant went without the service and facility of an integral portion of the residential property for an extended period of time, contrary to section 27 of the Act.

Section 65(1) (c) and (f) of the Act allow me to issue a monetary order to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” Policy Guideline #16 provides guidance in determining the value of the damage or loss under such circumstances. The Tenant had full use of the interior portion of the rental unit; however, I find from the evidence before me that the manner in which the Tenant would have used the deck during the months it was unsafe, including access to the rental unit, warrants a decrease in rent of fifteen percent. I find the deck was in poor condition from November 2018 at the latest; therefore, I award a rent reduction for a six month period. I award the Tenant fifteen percent of the \$1,435.00 monthly rent, which is \$215.25, times six months for a monetary award of \$1,291.50.

Summary

I find that the Tenant overpaid the security and pet damage deposits by \$365.00, so I authorize the Tenant to deduct this award from a future rent payment. I further find that the Tenant has met the burden of establishing that a service or facility of the rental unit was not repaired by the Landlord in a timely way. I find that the Tenant and his family would have used the deck more than they were able to, given its state of disrepair. I find that the deck was unsafe and not suitable for use by the Tenant for at least six months prior to being repaired properly in June 2019. Therefore, I award the Tenant with a rent reduction of fifteen percent of the rent for six months. The Parties agreed that the monthly rent is \$1,435.00, so the award is, therefore, \$215.25 times six months or

\$1,291.50. I also award the Tenant recovery of the \$100.00 Application filing fee for a total award of \$1,756.50. I authorize the Tenant to reduce two future rent payments totaling this amount, for example, reduce the rent by \$878.25 for two months, in order to satisfy this award.

	CATEGORY	AMOUNT
1	Deposit overpayment	\$ 365.00
2	Landlord failed to comply with section 32 of the Act for at least six months	\$1,291.50
3	Recovery of the \$100.00 Application filing fee	\$ 100.00
	TOTAL	\$1,756.50

Conclusion

The Tenant was successful in his Application for a rent reduction. I award the Tenant with a fifteen percent reduction of the monthly rent for six months in the amount of \$215.25 per month. I also award the Tenant with recovery of the security and pet damage deposits overpayment of \$365.00, and recovery of the \$100.00 Application filing fee for a total award of \$1,756.50. I authorize the Tenant to reduce future rent payments by the awarded amount in order to recover this award.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 5, 2019

Residential Tenancy Branch