



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “*Act*”) for an Order for the Landlord to complete repairs, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenants and the Landlord were present for the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord did not submit any evidence prior to the hearing. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Should the Landlord be ordered to complete repairs?

Should the Landlord be ordered to comply with the *Act*, *Regulation*, and/or tenancy agreement?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy started in December 2015. Rent in the amount of \$1,350.00 is due on the first day of each month and the Tenants paid a security deposit of \$675.00 at the start of the tenancy.

Regarding their request for repairs, the Tenants testified that the roof of the rental unit has needed replacing since they moved in. They stated that it was brought to their attention from the property management company at the start of the tenancy, but they noted that the company was only involved for approximately one year. The Tenants stated that the roof was never fixed and instead that a tarp was put on the roof but eventually blew off.

The Tenants testified that following this, plastic was placed on the roof last January, but a large portion of the plastic covering ripped off over the summer. The Tenants stated that there has been water leaking into their rental unit. In particular, they noted that the upstairs bathroom was leaking, although this was fixed and stopped temporarily. They also noted that there are leaks into 5 or 6 different rooms in the rental unit.

The Tenants also stated that the upstairs bathtub is leaking water to the bathroom on the main level. They stated that they have notified the Landlord numerous times of the issues, but that the issues with leaking remain. The Tenants stated that they have been unable to use the lower level bathroom as they are concerned about the area of the ceiling from the water leak upstairs.

The Tenants submitted into evidence copies of text message communication with the Landlord. The text messages include photos of the leaking areas of the rental unit as well as the plastic on the roof that has ripped.

The Tenant stated that a plumber attended the rental unit in July or August 2019 to assess the issues, but that no repairs were done. The Tenants noted that there are now mould issues in the areas of the rental unit where water is leaking.

The Tenant are also requested that the tiles are fixed in the bathroom as they are cracked. Included in the text message evidence is photos of the damaged tile around the bathtub.

The Landlord was in agreement that there are issues with the roof. She stated that the insurance company is dealing with the repair issues which has caused some delays. She noted that it is not yet clear whether the roof issues can be repaired or if the roof needs to be replaced. She stated that due to the delays with insurance and the current time of year, she does not expect the roof repairs to be completed until July 2020.

The Landlord also stated that she is aware of water leaking issues in the bathroom and is aware of leaking in the rental unit from the roof but stated that it is only in a couple of spots and not 5 or 6 as indicated by the Tenants. The Landlord agreed that there are some repairs needed inside the rental unit but stated that she was not 100% sure about the repairs needed.

Regarding the roof, the Landlord initially stated that it was not leaking anymore as the insurance company had a tarp put on the roof. However, later she stated that there was plastic on the roof and that only the front part of the plastic is currently missing. The Tenants disagreed and said that there is no tarp and that the plastic that replaced the tarp is ripped and dangling off the roof as shown in their photos, and is therefore, not preventing further leaks from occurring.

The Landlord stated that she was not aware of any mould issues and has not received any photos regarding mould. The Tenants stated that they sent text messages to the Landlord which included photos of mould in the rental unit.

The Tenants also applied for an Order for the Landlord to comply and noted that this was connected to their request for the Landlord to conduct repairs, and not related to a separate issue.

The parties discussed settlement but were unable to reach an agreement.

The Landlord testified that the Tenants signed a one-year tenancy agreement which has since expired, and that no new tenancy agreement was entered into. She stated that the Tenants can move out and that they should also pay more rent as the rent is too low.

Analysis

Regarding the Tenants' request for repairs, I refer to Section 32(1) of the *Act* which states the following:

- 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.

The Landlord did not disagree that the roof needs repairing and/or replacing and stated that this is in process with the insurance company. However, although I understand that there may be delays due to weather and having the insurance company involved, I do not find it reasonable that the Tenants should wait more than six months for the issue to be resolved, particularly as the issue with the roof seems to be longstanding.

Although the Landlord provided some conflicting testimony regarding whether or not there is a tarp on the roof, it seems that both parties testified that there is currently plastic on the roof that is not currently covering the whole roof area. I also find that the photos included in evidence support this testimony. As such, I find that this needs to be resolved immediately, both for the protection of the Tenants as well as to protect the Landlord's property. Therefore, the Landlord is ordered to have certified roofing professionals attend the rental unit and securely cover the roof to prevent leaks until such time as the roof can be repaired and/or replaced. This must be done by December 15, 2019.

I also accept the evidence before me that shows that there are areas of the rental unit that are leaking from the roof, as well as the upstairs bathtub leaking into the bathroom below. I find that the Landlord was aware of these issues, both through the text message communication from the Tenants that was submitted into evidence and also from her own testimony which confirms that she was aware of some areas of water leaking. Regardless of whether the Landlord was notified as possible areas of mould, I find it likely that mould may be present in the areas where water is leaking and therefore find that this should be dealt with accordingly as part of repairing the leaks.

I find it unacceptable that the Tenants should reside in the rental unit with ongoing leaks and also find that the Landlord should want the issue resolved as soon as possible to

prevent further damage to her rental unit. Therefore, I order the Landlord to have a remediation company attend the rental unit to assess the leaking areas and possible mould and conduct repairs as necessary. This must be completed by December 30, 2019.

Regarding the bathtub leaking, the Landlord is ordered to have a certified plumber attend the rental unit to assess and repair the bathtub leaking issue, including the cracked tile and any resulting damage from the leaking bathtub. This must be completed no later than December 30, 2019.

Regarding the repair or replacement of the roof, I understand that there may be delays in completion due to the current time of year. However, I do not find it reasonable for the Tenants to wait until July 2020 for the roof to be repaired and do not find that delays due to insurance should impact the Tenants any further. Therefore, I order the Landlord to have the roof assessed and then repaired or replaced no later than February 29, 2020. This work must be completed by certified roofing professionals.

Regarding the Tenants' claim for the Landlord to comply, as they testified that this is not a separate issue from the repairs, I decline to make any additional orders beyond the repairs that the Landlord has been ordered to complete.

Although the Landlord testified as to issues with the tenancy including a desire to seek a higher rent, I do not find this to be relevant to the repair issues brought forth by the Tenants. A landlord's responsibilities to maintain and repair the rental unit are not connected to the monthly rent amount and instead are required regardless of whether the landlord believes the rent is too low or not. I also note that based on the testimony of the parties, it seems that the Tenants are now in a month-to-month tenancy agreement which occurs automatically following the expiration of a fixed term agreement.

As the Tenants were successful with their application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Tenants may deduct this amount from their next monthly rent payment as satisfaction of the amount owed.

Conclusion

The Landlord is ordered to have the following repair completed by certified roofing professionals no later than December 15, 2019:

- The roof secured with a tarp or other means that would prevent leaking until the roof repair/replacement can be completed.

The Landlord is ordered to have the following repairs assessed and completed by a certified remediation company no later than December 30, 2019:

- The damage from any areas of water leaking inside the rental unit, including possible presence of mould

The Landlord is ordered to have the following repairs completed by a certified professional plumber and other professionals as required no later than December 30, 2019:

- The cracked bathroom tile to be replaced.
- Bathtub leak and resulting damage to be assessed and repaired.

The Landlord is also ordered to have the roof repair or replacement completed by certified roofing professionals no later than February 29, 2020.

Pursuant to Section 72 of the *Act*, the Tenants are awarded the recovery of the filing fee in the amount of \$100.00. They may deduct \$100.00 from their next monthly rent payment as recovery of this fee.

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 26, 2019

Residential Tenancy Branch