



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT OLC RR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

Both parties appeared and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties or their representatives were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 15, 2019, and was to end on April 15, 2020. Monthly rent was set at \$2,200.00, payable on the first of the month. The tenants paid a security deposit and pet damage deposit, in the amount of \$1,100.00 each deposit for this tenancy. The tenants moved out on October 1, 2019.

The tenants are seeking the following monetary orders. The tenants are seeking a rent reduction in the amount of \$12,100.00, which is equivalent to the rent paid for this tenancy. The tenants are also seeking compensation for allergy medication in the amount of \$116.12.

The tenants described in the evidentiary materials as well as in the hearing why they are seeking reimbursement of the rent they paid for this tenancy. The tenants testified that although they were promised by the landlords a new dishwasher, they did not receive this until June of 2019. The tenants also testified that they were without a safe and working oven until June 7, 2019, despite the fact that they had discovered the damage to the oven upon move-in on April 15, 2019. The tenants feel that the landlords withheld the provision of these appliances until the issue with the missing rent money was resolved. The tenants submitted that living without a working oven was the toughest as they were a larger family that relied on the appliance. The tenants testified that they experienced an increase in their grocery bills, and suffered an inconvenience due to the lack of use of the oven for such a long time period. The tenants testified that they were especially frustrated due to the fact that the landlords would communicate timelines to the tenants, but would not follow through.

In addition to the issues with the appliances, the tenants discovered mold in the home upon move in on April 15, 2019. The tenants feel that the landlords dismissed their

concerns for their health by failing to address the problem, and ignoring their obligations under the *Act* to repair and maintain the home until pressured to do so. The tenants submit that the landlords sent someone to inspect the mold on June 17, 2019, but the technician did not find active mold. The technician did not take a sample, and the landlords dispatched someone to clean the carpet on June 20, 2019. The tenants were still concerned that the mold issue was greater than what the landlords and technician believed.

On June 20, 2019, the tenants provided the landlords with a written list of items that needed to be addressed as set out below:

- Have a sample of the mold in the two west rooms of the house tested
- Pushout window in same room repaired so it closes properly
- Install a gate at the west side of the house that can open and close
- Inspect/Repair the floor in the hallway where it is coming up
- Have the furnace fan inspected for the reported issue of it being on all day for no reason

The tenants gave the landlords a deadline of July 20, 2019 to resolve the above issues. The tenants testified that they had to contact bylaw enforcement in order to have the mold issue resolved, and the inspector attended on July 22, 2019. The inspector contacted the landlords to have the issue resolved. The tenants feel that this issue would not have been resolved without their efforts.

The tenants did some investigation and were able to get in contact with the previous tenants. The tenants testified that they were informed that the previous tenants did inform the landlords of the issues with the oven and mold, and that the landlords were aware of these issues. The tenants testified that the landlords had offered compensation equivalent to one month's rent in an email to them, which was not fulfilled.

The landlords admit that there was a delay in replacing the oven. The landlords also feel that they had done their best to resolve the mold issue by dispatching a technician, who told them it was not active mold. The landlords testified that they did comply with bylaw enforcement, and the delay was due to the fact that they never had to deal with this issue before, as well as a death in the family. The landlords do not deny that there was a delay in resolving the issues, and feel the proposed compensation of \$500.00 to be fair.

Analysis

The tenants' application for rent reduction was made in accordance with the following provisions of section 65 of the *Act* which allows me to make an order regarding past and future rent:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], 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:...*

(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;...

The landlord's obligations to maintain and repair facilities in a rental property are set out in section 32(1) of the *Act* which reads in part as follows:

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,...

Section 27 of the *Act* establishes the basis for a landlord to terminate or restrict services or facilities with respect to a tenancy:

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.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that the provision of functional appliances to be essential to the tenants' use of the rental unit. By failing to provide this facility for almost 2 months into the tenancy, and without giving the tenants a true indication of when they would be provided with the replacement appliance, I find that the landlords failed to comply with section 27(1)(a) or (b) of the *Act*.

The tenants are also seeking a rent reduction due to the landlords' failure to address the mold issue in a timely manner, despite the tenants' requests. The landlords did not dispute that there was a delay in resolving this matter, and attributed the delay to lack of experience and having to deal with other non-tenancy related issues. The *Act* is very clear about a landlord's obligations to repair and maintain their rental property. Although the landlords may not have understood their obligations, this does not relieve them of their responsibility to fulfill them as landlords. I find that the landlords did not resolve the issue in a timely manner, and as a result the tenants suffered a loss in the value of their tenancy.

In this case the tenants requested a rent reduction equivalent to rent paid for this entire tenancy. In assessing their claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Based on the evidence before me, I accept that the landlords have failed to provide a facility that is an essential to the tenants' use of the rental unit for almost 2 months. I find that the landlords failed to provide a reasonable explanation for the delay. I find that the tenants did their best to continue the tenancy without the use of the functioning oven, but as a result of the landlords' actions they did suffer a loss in the value of the tenancy. Although the tenants submitted that they suffered a monetary loss, I find that the tenants did not provide sufficient evidence to support the value of this loss. Similarly, I am not satisfied that the tenants provided sufficient evidence to support that they suffered a hundred percent reduction in the value of their tenancy due to the landlords' failure to address the mold issue in a timely manner.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

As I accept the tenants’ testimony and evidence that they did suffer a loss due to the landlords’ failure to comply with sections 27(1) and 32(1) of the *Act*, I find that they are entitled to some compensation for the reduction in the value of the tenancy due to these breaches. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenants nominal damages of \$200 for the loss of use of the facilities during this tenancy, and the equivalent of one months’ rent for the failure of the landlords to deal with the mold in a timely manner for a total monetary order of \$2,400.00.

The tenants also submitted a monetary claim for the allergy medication taken during this tenancy. I am not satisfied that the tenants had provided sufficient evidence to support that the medical issues suffered by tenants were directly and solely attributed to the landlords’ actions. As the burden of proof is on the tenants to support their claim, I dismiss this portion of their claim without leave to reapply.

I allow the tenants to recover the filing fee for their application. As this tenancy has now ended, I dismiss the tenants’ application for the landlords to comply with the *Act* and tenancy agreement.

Conclusion

I issue a Monetary Order in the amount of \$2,500.00 in the tenants’ favour for the landlords’ failure to comply with the *Act*, as well as for recovery of the filing fee for this application.

The tenants are provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Court.

The remainder of the tenants' application is dismissed without leave to reapply.

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 29, 2019

Residential Tenancy Branch