



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC RP MNDCT MNRT FFT

Introduction

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

- an order for the landlord to comply with the *Act*, regulations or tenancy agreement, pursuant to section 62 of the *Act*;
- an order for the landlord to make repairs, pursuant to section 32 of the *Act*;
- a monetary order for the cost of emergency repairs paid by the tenant and compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to sections 33 and 67 of the *Act*; and
- recovery of the filing fee paid for this application from the landlord pursuant to section 72 of the *Act*.

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

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenants' Notice of Dispute Resolution Proceeding Package and evidence, and the tenants confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that both parties were sufficiently served for the purposes of this hearing in accordance with the *Act*. I have only considered evidence exchanged between the parties and submitted to the Residential Tenancy Branch within the time limits set out in the Rules of Procedure.

Preliminary Issue – Severing of Unrelated Claims

The tenants' application included unrelated monetary compensation claims to the tenants' primary application to order the landlord to make repairs and comply with the *Act*, Regulations and tenancy agreement.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Residential Tenancy Policy Guideline #23 further explains that:

The director may determine that claims are unrelated if they fall into either of two categories: matters that have no connection, and matters that may be connected but have different statutory outcomes.

I find that the tenants' request for an order for the landlord to make repairs and comply with the *Act*, Regulations or tenancy agreement is the primary application and as such the tenants were provided with an earlier hearing date than for a monetary compensation claim. As the tenants' additional claims for monetary compensation have a different statutory outcome, I dismiss with leave to reapply the tenants' claims except for their application for an order for the landlord to make repairs and comply with the *Act*, Regulations or tenancy agreement, and their request to recover the cost of the filing fee for this Application. The tenants are at liberty to reapply for the dismissed monetary claims subject to any applicable limits set out in the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to make repairs?

Should the landlord be ordered to comply with the *Act*, Regulations or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed that this fixed term tenancy began April 1, 2019 with a scheduled end date of March 31, 2020. Monthly rent of \$2,200.00 is payable on the first of the month. The rental unit is a two-level home with living area located on the ground level and an unfinished basement where laundry is located.

The tenants testified that their family has been suffering with an irritant-related cough and believe that fiberglass left in the basement when they moved in has been the source of their health issues. Tenant A.G. took it upon herself to pack up the fiberglass and move it out of the rental unit by July 2, 2019 according to the tenants timeline of events submitted into documentary evidence. The tenants testified that they are requesting an order to require the landlord to hire a cleaning service to deep-clean the rental unit and to retain the services of an air “scrubber” to ensure any remaining fiberglass is removed.

The landlord disputed the tenants’ claim that the fiberglass caused their cough and instead attributed it to other causes such as smoking and pertussis. The landlord testified that there are no safety standards regarding fiberglass and referenced the two air quality tests in which the landlord claimed there was no finding of any air quality concerns beyond an acceptable safety standard.

The tenants confirmed that there was nothing in the air quality tests results that demonstrated the air quality in the rental unit failed to meet health and safety standards in law, however, they referenced their medical documentation in which their cough is identified as being caused by an irritant.

Analysis

Section 32 of the *Act* sets out the landlord and tenant obligations for repair and maintenance of a rental unit, 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, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In accordance with Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the onus to prove their case is on the person making the claim. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In this case, it is the tenants who bear the burden of proof to prove their claim, on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further corroborating evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this matter, the determinative issue is whether there is sufficient evidence to demonstrate that the landlord has failed to provide and maintain the residential property in a state that complies with the health, safety and housing standards required by law, and therefore should be ordered to hire a cleaning service to clean the rental unit and to retain the services of an air "scrubber" in order to meet the standards required by law.

Two air quality tests were submitted into evidence, however, the tenants were unable to demonstrate that the results indicated a failure to be in compliance with any municipal, provincial or federal health, safety or housing standard legislation.

Although the tenants referenced their medical documents as evidence of their health issues, I do not find that there was sufficient evidence to demonstrate that their experienced health issues are directly related to a failure by the landlord to comply with

providing and maintaining the residential property in a state that complies with the health, safety and housing standards required by law.

As previously noted, the tenants bear the burden of proving their claim on a balance of probabilities. After reviewing the totality of the evidence and testimony before me, on a balance of probabilities, I find that the tenants have failed to provide sufficient evidence to meet this burden and I therefore dismiss their claim for an order to require the landlord to hire a cleaning service to clean the rental unit and to retain the services of an air “scrubber”.

As the tenants were not successful in the application to obtain an order, the tenants are not entitled to recover the cost of the application from the landlord. Therefore, the tenants must bear the cost of the filing fee for their application.

Conclusion

The tenants’ application for an order for the landlord to make repairs and comply with the *Act*, Regulations or tenancy agreement is dismissed.

The tenants’ monetary compensation claims are dismissed with leave to reapply as those claims were not considered at this hearing.

The tenants must bear the cost of the filing fee for their application.

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: December 4, 2019

Residential Tenancy Branch