



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE MERRITT REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, RP

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for an order requiring the landlord to make repairs to the rental unit and to dispute a rent increase from the landlord.

The tenant and the landlord's agents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the parties confirmed that they had received the other's evidence.

Thereafter all participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled an order requiring the landlord to make repairs to her rental unit and to an order disallowing a rent increase?

Background and Evidence

The tenant submitted a written tenancy agreement showing this tenancy began on July 2, 2003, for a monthly rent of \$565.00. The tenant paid a security deposit of \$260.00.

The current monthly rent is \$595.00.

Repairs to the rental unit-

In her application, the tenant wrote that she has lived in the property for 17 years and in 2003, she was made to enter into a new tenancy agreement. Since that time, the 80-year-old, single family property has had little work done on it. For instance, 3-4 years ago, the kitchen counters started to disintegrate and despite repeated requests, the landlord will not replace them. The tenant wrote further that they have fallen apart, that the carpets and tiles have also disintegrated, and she has no floorings.

She admitted at the hearing the kitchen counter issues have been resolved.

The tenant said that the carpet in her two bedrooms and the mudroom need replacing.

The tenant submitted that the flooring in her kitchen is being held down by nails and that it needs replacing.

At the hearing, the tenant submitted that when she moved in, she had a gas furnace, which was considered a "widow maker". The tenant submitted she would now like a new gas heater put back in, as currently she only has two oil heaters. The tenant submitted that she has used these for 5-10 years, the length of time she has not had proper heating.

Additionally, at the hearing, the tenant submitted that her yard needs to be remediated and re-sodded, as the landlord ripped up the yard. In a matter of an hour, the landlord destroyed the yard that she had built up for 20 years, according to the tenant.

The tenant's relevant evidence included photos of the rental unit.

Landlord's response to request for repairs-

The landlord submitted that the carpets in the living room were replaced with laminate flooring and tiles were replaced in the laundry room. The landlord submitted further that the kitchen counter tops were replaced in October 2018.

The landlord provided copies of the invoices to show the work was done.

As to the other flooring not replaced, the landlord submitted that the tenant's dogs were the cause of the damage to the floor. The landlord submitted that the owner is reluctant to replace the flooring in the kitchen while the tenant's dogs are still causing damage. The landlord also said that the last time they attended the rental unit, they did not see the nails in the floor.

As to the heating issue, the landlord submitted that the tenant does have a heat source, which is hydro and electric heat. The landlord said that the tenant chose to discontinue using the gas heat and due to years of inactivity on the account, Fortis disconnected the meter, after failing to hear back from the tenant. The landlord submitted they did not know anything about the disconnection. The landlord submitted that the lack of use of the gas heat and the subsequent disconnection of the meter altered the tenancy agreement.

As to the yard issue, the landlord submitted that there were major renovations taking place at the site which necessitated test pits being dug in the garden at unit 1, the rental unit here. These renovations involved installations of new septic systems.

The landlord submitted that the tenant was present and informed that the soil would have to be settled in order to re-seed and re-sod. Additionally, there was a total water ban in operation for several months in 2018.

The landlord submitted that the work was always going to be done and will be done in the spring, after winter.

Dispute of a rent increase-

The tenant submitted that the landlord wanted to increase her monthly rent by \$400.00 and are withholding heat and other repairs until it has been increased.

Landlord's response-

The landlord submitted that the tenant attended the office and voluntarily offered to increase the rent to \$850.00 per month to get the repairs done. The tenant never came into sign the mutual agreement, according to the landlord.

The landlord submitted that the tenant's rent will be increased in February 2020, according to the allowable rent increase guidelines, to the amount of \$607.00. The landlord submitted further that the tenant had been provided a three-month notice.

Analysis

The tenant here has the burden to prove her claim on a balance of probabilities.

Request for repairs-

Section 32 of the *Act* requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and

having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch (RTB) policy suggests a useful lifespan for the following building elements:

- Carpet: 10 years
- Linoleum: 10 years (20 years if hardwood)

From the evidence before me I find that all of the repair items raised by the tenant in her application have been addressed by the landlord, before the hearing, with the exception of the kitchen floor. The kitchen cabinets, countertops and living room flooring were replaced months in advance of the hearing.

Upon review of the tenant's photographic evidence, I find that the kitchen flooring needs replacement. The photo shows that the linoleum has come apart and is being held down by nails and is well beyond the useful lifespan for building elements, as set by RTB policy. I do not find this supports the landlord's assertion that the tenant's dogs are the cause of the problem, rather, I find the cause is more likely than not that the age of the floor has caused its disintegration.

Therefore, pursuant to section 32 and 62(3) of the Act, I Order the landlord to:

- Replace the kitchen flooring in the unit with new flooring of the landlord's choice;

I Order that these repairs be completed within a reasonable period of time, but no later than January 31, 2020.

The tenant is expected to cooperate with the landlord by removing belongings and providing access to the rental unit; in accordance with section 29 of the Act, which is appended after the conclusion of this decision.

I do not find the tenant submitted sufficient evidence to support her request to have the mud room flooring replaced.

As to the tenant's request for heating, I find the landlord has complied with their obligation under the Act to provide heating to the rental unit. The undisputed evidence is that the tenant has electric and oil heat. I further find it was the tenant's actions that caused the gas meter to be disconnected, not the landlord's. I therefore decline to require the landlord to restore the gas meter to the rental unit.

As to the yard repair, I find the evidence supports that the landlord was making necessary repairs to the septic system, which required the tenant's yard to be dug. The landlord said that they fully intend to re-seed and re-sod the yard in the spring.

Due to the location of the rental unit, I find that it would be unlikely that any yard work could be done during the winter months.

I therefore decline the tenant's request to require the landlord to repair the yard at this time.

Dispute of a rent increase-

The evidence shows that the tenant's rent has not been increased and I therefore dismiss her application to dispute it.

Conclusion

The tenant's application for repairs has been granted in small part and the landlord is ordered to replace the kitchen flooring by January 31, 2020.

The tenant's request to dispute a rent increase 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: January 2, 2020

Residential Tenancy Branch