



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: OLC, RP, FFT
 LL: MNDCL, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on September 29, 2019, (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order that the Landlord comply with the Act;
- an order for regular repairs; and
- an order granting recovery of the filing fee.

The Landlords’ Application for Dispute Resolution was made on December 20, 2019, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order granting recovery of the filing fee.

The Tenants, the Tenants’ Interpreter L.T., and the Landlords attended the hearing at the appointed date and time and provided affirmed testimony

At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, the Tenants stated that they were also seeking a monetary order for compensation. After reviewing the Tenants' Application, it appeared as though the Tenants had not applied for monetary compensation. The Tenants confirmed that they did not make an amendment to their Application prior to the hearing to include this claim. As the Tenants did not submit their monetary claim in accordance with the Rules of Procedure, I find that it will not be considered in my decision. The Tenants are at liberty to reapply for monetary compensation should they find it necessary.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlords comply with the Act, tenancy agreement or regulations, pursuant to Section 62 of the *Act*?
2. Are the Tenants entitled to an order for regular repairs, pursuant to Section 32 and 62 of the *Act*?
3. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
5. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 22, 2017. The Tenants are required to pay rent in the amount of \$1,225.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$575.00.

The Tenants' Claim

The Tenants applied for an order that the Landlords comply with the *Act*. The Tenants stated that the Landlord had raised the rent recently. After further discussion, the parties

agreed that the Landlord raised the rent in accordance with the maximum allowable amount permitted under the *Act*. As such, I dismiss the Tenants' claim without leave to reapply.

The Tenants also applied for an order for regular repairs. The Tenants stated that since the start of the tenancy, there has been a draft of air coming from the bedroom window which appears to not close properly. The Tenants stated that this has caused them discomfort leading to having difficulties sleeping. The Tenants stated that they mentioned the problem to the Landlords at the start of the tenancy and that there has been no discussion regarding the window since.

In response, the Landlords stated that they inspected the window at the start of the tenancy. The Landlords stated that the window appears to close properly, however, given it is an older building, the Landlords stated that the window is a single pane which does not completely prevent the cold air from entering the rental unit. The Landlords stated that they have discussed the issue with the Strata who have indicated the windows will not be replaced at this time.

During the hearing, the parties discussed possible alternative solutions to prevent the air from entering the rental unit. The parties agreed that the Landlord will install a plastic film on the window which will prevent the air from entering. The Tenants stated that they were satisfied with this solution.

The Tenants stated that they have also noticed that the toilet only partially flushes, which is creating an unsanitary situation. The Landlords stated that they were unaware of this issue until they received the Tenant's Application. During the hearing, the Landlords agreed to inspect the toilet and make the necessary repairs to ensure the toilet flushes correctly.

Lastly, the Tenants stated that there is an issue with the washing machine located in the rental unit. The Tenants stated that they are only able to fit 10 items of clothing in the washing machine at one time and that there seems to be a foul smell in the washing machine which is transferred to their clothing after each use.

In response, the Landlords stated that they have had the four-year-old washing machine inspected on two occasions by a certified appliance repair technician. The Landlords stated that the results of the washing machine inspection reports reveal that the washing machine is in good working order. The Landlords provided the inspection reports in support.

The Landlords also stated that the smell in the washing machine is a result of the Tenants leaving their wet laundry in the machine overnight which causes mildew. The Landlords stated that they provided the Tenants with information regarding how to care for and clean the washing machine to rid it of the smell.

If successful, the Tenants are claiming the return of the filing fee.

The Landlords' Claim

The Landlords are claiming for the monetary compensation in the amount of \$7,070.25 in relation to emergency restoration repair costs following a leak which took place in the rental unit on August 2, 2019. The Landlords provided a copy of the invoice in support. The Landlord stated that the invoice has not yet been paid by the Landlords, but they feel as though the Tenants should be responsible for paying these costs.

The Landlords stated that the Strata made arrangements to have a restoration company attend to mitigate and repair the damage caused to the rental unit by leak. The Landlords stated that they employment an appliance repair technician to inspect the washing machine to determine the cause of the leak. The Landlords stated that the inspection report indicated that the leak was a result of the pressure hose which came disconnect from the washing machine "probably because of unbalanced load causing leakage". The Landlords stated that the unbalanced load created vibrations which caused the hose to detach from the washing machine.

In response, the Tenants stated that they did not have an unbalanced load and that they have been indicating to the Landlords that the washing machine is defective. The Tenants stated that the invoice is addressed to the Landlords and that they don't feel as though it is their responsibility to cover this cost.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

In relation to the Tenants claims for regular repairs, I am satisfied that the parties agreed that the Landlords would place a film over the single pane window in the bedroom to prevent the draft from coming through the window. Also, the Landlords have agreed to inspect and if necessary, repair the toilet to ensure it flushes properly. I order that the Landlords undertake the inspection and repairs to the bedroom window and

toilet within two (2) weeks upon receipt of this decision. Should the Landlords not comply with this order, the Tenants are at liberty to apply for monetary compensation.

In relation to the Tenants' claim for the repair of the washing machine, I find that the Tenants have provided insufficient evidence to demonstrate that the washing machine is broken. The Landlords have provided sufficient evidence to demonstrate that the washing machine is in good working order. I find that it is reasonable to expect that the Tenants follow the cleaning instruction provided to them from the Landlords to reduce the smell coming from the washing machine. In light of the above I dismiss this portion of the Tenants' claim without leave to reapply.

In relation to the Landlords' claim for monetary compensation, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

The Landlords are seeking monetary compensation in the amount of \$7,070.25 to cover the costs of the restoration and repairs as a result of a leak that took place in the rental unit on August 2, 2019. I accept that the parties agreed that the leak originated from the washing machine.

The Landlords provided an inspection report which indicated that the pressure hose became disconnected from the washing machine “probably because of unbalanced load causing leakage”. I find that the Landlord provided insufficient evidence to support that the Tenants were misusing the washing machine which caused the leak. I find that the inspection report is not definitive evidence as it appears to be an unsupported theory.

I accept that the Landlords have not yet paid the invoice, therefore they have provided insufficient evidence to demonstrate that they have incurred a loss. In light of the above, I dismiss the Landlords’ claim for monetary compensation without leave to reapply.

As the repayment of the filing fee is discretionary, I decline to award either party the return of their respective filing fees paid to make their Applications.

Conclusion

I order that the Landlords undertake the inspection and repairs to the bedroom window and toilet as described in this decision within two (2) weeks upon receipt of this decision.

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 23, 2020

Residential Tenancy Branch