



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP RR MNDC LRE OLC FF

Introduction

This hearing was convened as a result of two (2) applications for dispute resolution filed by the Tenant. Both applications were submitted to the Residential Tenancy Branch on November 26, 2019. In the first application the Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “*Act*”):

- an order setting or suspending conditions on the Landlord’s right to enter the rental unit;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee

In the second application the Tenant applied for the following relief, pursuant to the *Act*:

- an order that the Landlord make repairs to the unit, site or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- a monetary order for money owed or compensation for damage or loss;
- an order granting recovery of the filing fee.

The Tenant and Y.N. attended the hearing and provided affirmed testimony.

The parties acknowledged service and receipt of the application packages and documentary evidence being relied upon. No issues were raised during the hearing with respect to service or receipt of these documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary & Procedural Matters

Rule of Procedure 6.11 prohibits a party from recording dispute resolution hearings unless an arbitrator has ordered that a hearing be recorded by an accredited court reporter for the purposes of an official transcript in accordance with Rule of Procedure 6.12. The parties were therefore ordered that no recording of the dispute resolution hearing was permitted.

Further, Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The Tenant was asked during the hearing which issue she believed was most important to address and responded that the repairs were most important to her. Accordingly, considering the Tenant's agreement and the limited time available to address the issues raised in the applications (I note that almost 2 hours were spent on repairs alone), I find it appropriate to exercise my discretion to dismiss all but the request for an order granting repairs to the rental unit, with leave to reapply for the remainder of the relief sought as appropriate.

Settlement

During the hearing, many of the repair issues raised by the Tenant were resolved by mutual agreement. The parties were advised that their settlement would be documented in my Decision.

The parties agreed to settle certain aspects of the Tenant's claim as follows:

1. The Landlord agrees to have a certified contractor attend the rental unit to inspect the furnace and follow any recommendations made to ensure proper function.
2. The Landlord agrees the Tenant may replace the washing machine with a unit she purchased.
3. The Landlord agrees the Tenant may deduct \$250.00 from a future rent payment on account of the replacement washing machine.
4. The Landlord agrees to repair the shower in the master bathroom to prevent further flooding on the bathroom floor.
5. The Landlord agrees to relate the Tenant's concerns regarding smoking on the strata property to the strata council.
6. The Landlord agrees to relate the Tenant's concerns regarding a broken drain pipe leading to the patio and causing flooding on the patio to the strata council.
7. The Landlord agrees to paint the ceiling in the garage.
8. The Landlord agrees to remove mold identified in or near the den.
9. The Landlord agrees to repair or replace window blind clips.
10. The Landlord agrees to relate the Tenant's request for yard maintenance to the strata council.

In the circumstances, I find it appropriate to order that the above items be completed by February 14, 2020. The above items were settled in accordance with section 63 of the *Act*. The settlement described above in no way impacts the agreement made between the parties on November 26, 2019, which remains in effect.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord make repairs to the unit, site or property?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began more than eight years ago on October 1, 2011. Rent is currently due in the amount of \$1,512.00 per month. The parties agreed the Tenant paid a security deposit of \$720.00, which the Landlord holds.

Several repair items claimed by the Tenant were unable to be resolved during the hearing. First, the Tenant seeks the replacement of carpeting in the rental unit due to mold. The Tenant noted the rental unit was a grow-op prior to her tenancy and submitted documents from the local government authority dated August 24, 2010 in support.

In support of the presence of mold in the rental unit, the Tenant submitted an indoor air quality report dated December 10, 2019. The report noted “mold staining and moisture damage around all windows and sills...[and what] appeared to be a mold stain on the ceiling in the ensuite bathroom.” The report also noted a “strange stain” and “possible mold growth” on the carpet. Air sampling indicated that mold groups were “not significantly elevated”. No interpretation of the results was offered by the Tenant and the author of the report did not attend the hearing. The Tenant did not testify she has experienced any health issues. The Tenant also relied on a photograph depicting a stain on the carpet.

In reply, the Landlord testified that any mold in the unit was caused by the use of plastic window covering by the Tenant, which are used to retain heat. The Landlord also testified he has had stains in the carpet professionally cleaned and that the issues raised by the Tenant do not justify a full carpet replacement.

Second, the Tenant seeks an order that the Landlord repair or replace the gas fireplace in the rental unit. The Tenant testified it is an ineffective source of heat permits a draft to enter the rental unit.

In reply, the Landlord provided a report dated December 13, 2019. It confirms that on December 13, 2019 a technician inspected the furnace and fireplace. The technician indicated that the fireplace was inspected and was “working correctly.” The Landlord confirmed the furnace and fireplace will be serviced as necessary.

Third, the Tenant seeks an order that the Landlord insulate the ensuite bathtub. The Tenant testified it is cold to touch and that bathwater cools quickly. The Tenant suggested rent should be reduced.

In reply, the Landlord questioned whether any bathroom tub is insulated. The Landlord also submitted a report based on an inspection of the master bedroom and en suite bathroom on December 27, 2018. The report indicated that “the functioning of the heating of the concerned spaces [is] satisfactory.”

Fourth, the Tenant seeks an order that the Landlord replace a bathroom counter that was cut away to accommodate a replacement toilet. In reply, the Landlord denied the entire bathroom counter needs to be replaced but offered to paint it to make it look more aesthetically pleasing.

Fifth, the Tenant seeks an order that the Landlord pressure wash the front walk and driveway. In reply, the Landlord agreed to clean it with “chemicals” but did not agree to pressure wash the area noting it was a strata responsibility.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 32 of the *Act* sets out the obligations of a landlord to repair and maintain a residential property. It states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

With respect to the Tenant’s request for an order compelling the Landlord to replace carpet in the rental unit, I find there is insufficient evidence before me to grant the relief sought. While I accept that there may be mold in the rental unit, and that it may be unsightly, I find there is insufficient evidence before me to conclude that the rental unit does not comply with health, safety and housing standards and that the carpet makes the unit unsuitable for occupation. Indeed, the report indicates that mold on the carpet is “possible” and confirms airborne mold was “not significantly elevated”. This aspect of the Tenant’s claim is dismissed.

With respect to the Tenant's request for an order compelling the Landlord to repair or replace the gas fireplace, I find there is insufficient evidence before me to grant the relief sought. While I accept there may be a draft in the rental unit, I am persuaded by the Landlord's documentary evidence of an inspection on December 13, 2019 which concluded the fireplace was "working correctly." This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's request for an order compelling the Landlord to address a cold ensuite bathtub, I find there is insufficient evidence to grant the relief sought. While I accept the bathtub and surrounding area may be cold to touch, I am persuaded by the report following an inspection on December 27, 2018 which indicated the heating system in the affected areas is "satisfactory." This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's request for an order compelling the Landlord to replace a bathroom counter, I find there is insufficient evidence before me to grant the relief sought. While I accept the bathroom counter was altered to accommodate a new toilet, I find the alteration did not impact the health, safety and housing standards required by law or make the rental unit any less suitable for occupation. I also note the Landlord's willingness to take steps to make the counter more aesthetically pleasing. This aspect of the Tenant's claim is dismissed.

With respect to the Tenant's request for an order compelling the Landlord to pressure wash the front walk and driveway, I find there is insufficient evidence before me to grant the relief sought. I find it is more likely than not that pressure washing of outdoor areas is the responsibility of the strata council and not the Landlord. This aspect of the Tenant's claim is dismissed.

As the Tenant was not successful with respect to the disputed claims, I decline to grant recovery of the filing fees paid to make the applications.

Conclusion

Subject to the settlement agreement between the parties described above, I find the Tenant's applications as they relate to repairs are dismissed.

The Tenant is granted leave to reapply for the remainder of the relief sought at a later date. However, I note that Rule of Procedure 2.9 prohibits a party from dividing claims.

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 28, 2020

Residential Tenancy Branch