



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FFT

Introduction

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

- an Order 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 landlord, pursuant to section 72.

The tenants and the landlord's resident manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the tenants' notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The resident manager testified that she was personally named as the landlord in this application for dispute resolution; however, she is not the landlord but the landlord's resident manager. Pursuant to section 64 of the *Act*, I amend the tenants' application for dispute resolution to name the landlord, rather than the resident manager.

Issues to be Decided

1. Are the tenants entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2019 and is currently ongoing. Monthly rent in the amount of \$2,400.00 is payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenants testified that at the time they viewed the subject rental property, prior to the beginning of the tenancy, the subject rental property was being renovated and that the resident manager told them that the renovation would be completed by the time they moved in on September 1, 2019.

The tenants testified that while the resident manager did her best to have all the required repairs to the subject rental property completed, the repairs were not completed by September 1, 2019.

The tenants entered into evidence the following list of deficiencies at the subject rental property when they moved in:

- Heating vents either not installed or didn't fit in ground and ceiling.
- Missing oven rack.
- Tilted stove and wasn't level.
- Broken stove range fan.
- Wooden floors not installed correctly needed nailing and some slats not fitted properly.
- Clogged drains which has resulted in very strong sewerage smells throughout the house.
- No plug in the bath in the upstairs bathroom it was completely broken.
- A hole was in the back of the bedroom door.

- Painting throughout the house has been done poorly and sloppy.
- Paint splatter all over wooden floors.
- Kitchen pipes below and sink drains are still leaking although a plumber looked at it and clogged/backed up at times also resulting in bad smells and poor drainage.
- Bathroom tub backed up.
- Dishwasher leaks and floods the floor.
- Basement sliding door lock was broken.
- No fan in downstairs bathroom.
- The cupboard door in the on suite fell off when opened.
- The stairs coming off the kitchen to outside are wobbly.
- Outside of windows not washed.
- Oven door still has food stains from previous owner in between the glass and can't be removed.
- The corner cupboard in the kitchen not aligned properly and stays ajar unless pushed into place.
- Laundry room not finished or back of wall that was installed for the new bathroom.
- No outlets were in basement bedroom or hallway.
- Missing window screens.
- Three outlets weren't working, two in the kitchen one in upstairs bathroom.
- Deck floor panel wasn't nailed down.
- Fuse box broke and needed fixing.
- Fireplace wasn't cleaned.
- Drywall wasn't sanded before painted in basement and in other areas with one wall pull of dry paint drippings.
- Areas on the drywall has been patched and not sanded or painted correctly and can still see the end of silver screws used to install it.
- Drywall in hall basement has electrical wires showing should have been boxed.
- Hole left open where lighting is in downstairs bedroom.
- Paint all over light fixings and switches.
- Rusted shower bar in upstairs bathroom.
- Taps not installed properly. The cold handles were not lined up therefore one was fixed and the other had to be replaced.
- The toilet paper holders were loose and needed fixing.
- Stove top element food catchers were so dirty they couldn't be cleaned so were replaced.
- The toilet in the upstairs bathroom has a constant sound of draining.
- There is mould appearing in the upstairs bathroom on the ceiling and would like testing done for the whole house.

The tenants testified that from August to October 2019 work people attended at the subject rental property to complete the above repairs one to four times per week. The

tenants testified that this caused a significant disruption to their family life and required the tenants to take time off from work to accommodate the trades people. The tenants testified that most of the issues have been resolved, but not all of them.

The tenants testified that they are seeking a 50% reduction in their rent for the months of August to October 2019.

The resident manager testified that she agreed to have the subject rental property ready for the tenants when they moved in on August 1, 2019 but that it was not possible as the extent of the issues with the subject rental property were more serious than originally known. The resident manager also testified that she was not able to get the drywall trades person into the subject rental property until September 12, 2019 due to the holiday schedule of the drywaller employed by the landlord.

The resident manager testified that the subject rental property is 40 years old and that the tenants should not have expected the property to be perfect. The resident manager did not dispute the tenants' testimony that trades people attended at the subject rental property 1-4 times per week from August to October 2019.

Both parties agree that the tenants and the resident manager walked through the subject rental property together on July 25, 2019. The resident manager testified that she left the move in condition inspection report with the tenants and asked them to sign it. The tenants testified that they did not sign the move in inspection report at that time because the property was still a construction zone and was not representative of what the resident manager told them they would be moving into on September 1, 2019.

Page 3 of the Residential Tenancy Branch move in condition inspection was entered into evidence. Page 3 does not state the condition of the subject rental property but does state:

Repairs to be completed at start of tenancy:

Bathroom countertop; basement outlets; new fridge

The tenants testified that the only repair item written on page three of the move in condition inspection report was the bathroom countertop as the landlord informed them on that date that they would not have it delivered and installed by September 1, 2019. The tenants testified that the resident manager added the other items in without their knowledge or consent. The resident manager denied changing the document in the absence of the tenants.

One page of an Apartment Inspection Report was also entered into evidence. It is signed by the tenant but is blank.

Analysis

Section 65(1)(f) of the *Act* states that 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 order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find page 3 of the move in condition inspection report and the apartment inspection report to be of no probative value as both parties agree that the contents do not reflect the move in condition of the subject rental property as work was done on the subject rental property between July 25, 2019 and August 1, 2019. I find that page one of the Apartment Inspection Report is of no probative value as it is blank.

I find that the resident manager verbally informed the tenants that all or substantially all of the renovations to the subject rental property would be complete when the tenants moved in on September 1, 2019. I find that, for a variety of reasons, substantially all of the renovations were not complete when the tenants moved in.

I find that the frequent attendance of trades people, organized by the landlord, at the subject rental property between August and October 2019 constitutes a breach of the tenants' entitlement to quiet enjoyment under section 28(b) of the *Act*. I find that the frequent attendance of trades people substantially interfered with the tenants' ordinary and lawful enjoyment of the premises.

While the tenant's right to quiet enjoyment was breached, I do not find that the attendance of trades people reduced the value of their tenancy by 50% as the tenants were still able to live at the subject rental property for the duration of the renovation. I find that the tenants are entitled to a reduction in their rent in the amount of 15% for the months of August to October 2019, for a total of \$1,080.00

As the tenants were successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct \$1,180.00, on one occasion, from rent due to the landlord.

Conclusion

The landlord breached section 28(b) of the *Act*.

The tenants are entitled to deduct \$1,180.00, on one occasion, from rent due to the landlord.

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: February 03, 2020

Residential Tenancy Branch