Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, LAT, FFT, MNDCT, DRI, PSF, LRE

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on December 18, 2019 (the "Application"). The Tenants applied as follows:

- For repairs to be made to the unit or property;
- For authorization to change the locks to the rental unit;
- An order that the Landlord provide services or facilities required by the tenancy agreement or law;
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- To dispute a rent increase that is above the amount allowed by law;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. The Landlord confirmed he was appearing for Landlord M.C.

The Tenant sought an adjournment at the outset based on the Tenants being ill and requiring more time to gather evidence. The Tenant also said she wanted Tenant G.W. to appear and that Tenant G.W. did not appear because he is sick. The Tenant did not point to any documentary evidence to support the adjournment request.

The Landlord did not agree to an adjournment. He said he was prepared to deal with the matters.

I considered rule 7.9 of the Rules of Procedure (the "Rules"). I denied the request for an adjournment for the following reasons. This is the Tenants' application and they should have obtained all of their evidence and submitted it with the Application or at

least prior to the hearing. The Application was filed December 18, 2019. The Tenants had two months to prepare for the hearing. The Tenants did not submit any documentary evidence to support the position that they could not prepare for the hearing due to illness. The Tenant did not explain why Tenant G.W. had to be present and the Tenants did not provide any documentary evidence to support the position that Tenant G.W. could not appear at the hearing. Tenant V.C. confirmed during the hearing that she had authority to appear for Tenant G.W. The Landlord did not agree to an adjournment.

I told the parties I would not allow an adjournment. I told the Tenant I would consider allowing the Tenants to withdraw the Application if that is what she wished to do. The Tenant did not want to withdraw the Application.

The Tenants raised numerous issues in the Application, not all of which are related. Pursuant to rule 2.3 of the Rules, I told the Tenant that matters in an Application for Dispute Resolution must be related. I told the Tenant I would hear whichever issue she wished to address as well as any related issues but that I would dismiss the remaining unrelated issues with leave to re-apply. The Tenant said she wanted to deal with the hydro issue. I heard the parties on the hydro issue which involves a request for compensation and repairs. I have also considered whether the Tenants are entitled to reimbursement for the filing fee. The remaining issues are dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "*Act*").

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord testified that he did not receive the Tenants' evidence.

The Tenant testified that they did not serve their evidence on Landlord M.C. but did serve it on the Landlord by regular mail. The Tenant did not point to any documentary evidence to support this.

Given the issue with service of the Tenants' evidence, the Tenant again asked for an adjournment to re-serve the evidence. The Landlord again said he did not want to adjourn and wanted to resolve the matters today.

I denied the Tenant's second request for an adjournment. The Tenants were required to serve their evidence on the Landlords and were required to prove they had done so at the hearing pursuant to rule 3.5 of the Rules. The Tenants should have provided proof of service of their evidence prior to the hearing. The Tenants are not entitled to an adjournment to enable them to re-serve their evidence when this should have been done, and evidence of such submitted, prior to the hearing.

I again told the Tenant I would not allow an adjournment and that we could either proceed or I would consider a request to withdraw if that is what the Tenant wished to do. The Tenant again said she wanted to proceed.

I told the parties I was not satisfied the Tenants' evidence was served on the Landlords as the parties gave conflicting evidence on this point and there is no documentary evidence before me to support that the evidence was served. I asked the parties for their position on whether the Tenants' evidence should be admitted, meaning I would consider it, or excluded, meaning I would not consider it, given I was not satisfied it was served. The Tenant submitted that the evidence should be admitted. The Landlord agreed it should be admitted.

Based on the Landlord's position that the Tenants' evidence should be admitted, I have admitted the Tenants' evidence and have considered it.

The Tenant testified that the Tenants did not receive the Landlords' evidence. The Landlord said the evidence was not served on the Tenants.

I told the parties the Landlords were required to serve their evidence and asked the parties for their position on whether the Landlords' evidence should be admitted or excluded in the circumstances. The Tenant took the position that it should not be admitted. The Landlord took the position that it should be admitted and stated that the Rules are wrong, the Rules are too harsh and the Rules conflict with each other.

Pursuant to rule 3.15 of the Rules, the Landlords were required to serve their evidence on the Tenants. There is no issue that the Landlords did not do so. I exclude the Landlords' evidence. I am satisfied admission of the evidence would be prejudicial to

the Tenants given they did not have an opportunity to view the evidence prior to the hearing and could not comment on the evidence at the hearing.

Although I did not make a decision about admission of the Landlords' evidence during the hearing, I explained to the Landlord that the evidence may not be admissible which would mean I would rely on what he said during the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the admissible documentary evidence. I have only referred to the evidence I find relevant in this decision.

I note the following about the Landlord during the hearing. The Landlord was difficult to understand and therefore I had to interrupt him to confirm my understanding of what he was presenting. The Landlord was cautioned a number of times not to interrupt. The Landlord was warned not to swear or I would not consider his testimony. The Landlord reacted negatively when asked questions. Near the end of the hearing, the Landlord sought an adjournment and requested to have the next hearing in person. I informed the Landlord we would not be adjourning. Considering rule 7.9 of the Rules, I was not satisfied an adjournment was appropriate given we had proceeded with the hearing and the Landlord had objected to adjourning twice.

Issues to be Decided

1. Are the Tenants entitled to an order for repairs to be made to the unit or property?

2. Are the Tenants entitled to compensation for monetary loss or other money owed?

3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

There is reference in the Application to the Tenants paying a pad rental. The parties confirmed the Tenants rent a manufactured home that is owned by the Landlords.

The Tenant testified as follows about the tenancy agreement in this matter. There is a verbal agreement. There is no written agreement. The agreement is between the parties on the Application. The tenancy started October 15, 2019 and is a

month-to-month tenancy. Rent is $1,025.00 due on the first day of each month. An $800.00 security deposit was paid by Tenant G.W. The $800.00 covered the pet damage deposit as well.

The Landlord testified as follows about the tenancy agreement in this matter. There is a written agreement. He gave Tenant G.W. two copies of the written agreement to sign. The written agreement was never signed or returned by the Tenants. The agreement is between the Landlords and Tenant G.W. only. At the outset, it was Tenant G.W. who moved into the rental unit. The other two Tenants did not move in with Tenant G.W. The written agreement was dropped off to Tenant G.W. The agreement was only between the Landlords and G.W. although G.W. said his wife was moving in. The tenancy started October 05, 2019 and is a month-to-month tenancy. Rent is $1,025.00 due on the first day of each month. A $500.00 security deposit was paid. No pet damage deposit was paid.

In reply, the Tenant testified as follows. The rental unit has two bedrooms. She and Tenant B.K. moved into the rental unit one week after Tenant G.W. did. She lives at the rental unit full time. All three Tenants pay rent.

I note that the materials show the tenancy started in 2018.

The Tenant sought compensation and repairs based on their hydro bills being too high.

The Tenant testified as follows. The rental unit is 720 square feet. The hydro bills are $285.00 on an equal payment plan. The actual cost of hydro is approximately $310.00 per month. She was told hydro would not cost more than $130.00 per month.

The Tenant testified that the high hydro bills are as a result of the Landlords using electricity for an internet system in the shed as well as issues with the windows, appliances and skirting.

The Tenant testified as follows in relation to the internet system. The Landlord has a shed on the property. He ran a whole internet system out of the shed from the start of the tenancy until October of 2019. The system included a server, heater and air conditioner. The system was wired into a panel in the home. The hydro bills have decreased since the Landlord shut the system down, but they are still too high. There are photos of the system in evidence.

The Tenant testified as follows in relation to the windows. The windows in the rental unit are single pane windows without latches. The windows are taped shut. A draft comes through the windows. The Landlord told Tenant G.W. that the windows would be replaced and Tenant G.W. agreed to the tenancy on this basis.

The Tenant testified as follows in relation to the appliances. The appliances in the rental unit are old and breaking down. The Tenants have had to replace some of the appliances. The appliances are 20 to 30 years old. The dryer has not been running and the stove was broken for a while. The Tenants are not running any heavy duty appliances.

The Tenant acknowledged there was no agreement at the start of the tenancy that the appliances in the rental unit would be upgraded.

In relation to the skirting, the Tenant testified that the skirting on the manufactured home has not been replaced and the home loses heat because of this.

The Tenant agreed the home is heated by electric baseboards.

The Tenant testified that the Landlords have not done anything about the above issues and, when pushed, tell the Tenants they are selling the home.

The Tenant sought compensation and repairs in relation to the hydro issue.

The Tenant sought past and future compensation in an amount equal to half of the Tenants' hydro bills.

The Tenant sought repairs of the windows, skirting and appliances including the fridge, dryer and microwave.

The Tenants submitted the following relevant evidence:

- A written Rental Agreement signed by the Landlord but not the Tenants;
- A letter from the Tenants to the Landlord dated November 17, 2019 outlining requested repairs and replacement of items in the rental unit;
- A letter to Tenant G.W. from the Landlord dated November 27, 2019 in response to the repair claims;
- Hydro bills; and
- Photos.

I gave the Landlord the opportunity to reply to the Tenant's testimony. The Landlord stated that the Landlords' evidence has been submitted. I reminded the Landlord that the evidence might not be admissible.

The Landlord said this is garbage and he has had enough.

I understood the Landlord to state that there has been an electrical inspection and the Landlords have been ordered to make repairs. The Landlord testified that the Tenants will not allow him on the property. He said, given this, he cannot do the repairs and if the repairs are not done, the hydro will be cut off.

I asked if the Landlord was acknowledging that the Tenants' hydro bills are higher because of the issue the Landlords have been ordered to repair. The Landlord said no.

The Landlord testified that the Tenants are comparing their hydro bills to others in the park which is not accurate because others in the park use a different type of heat. The Landlord testified that the rental unit is 820 square feet and heated by electric baseboards.

The Landlord denied that the Landlords agreed to repair anything in the rental unit. He said the Tenants destroyed the dryer and stove and that these are not his problem to deal with.

In reply, the Tenant acknowledged she could be wrong about the square footage of the rental unit. The Tenant testified that the Tenants have never told the Landlords they could not come onto the property and that they have just asked for notice.

Analysis

I do not accept that there was a written tenancy agreement agreed to between the parties in this matter as the written tenancy agreement submitted is not signed by the Tenants and the Tenant took the position that there is no written tenancy agreement.

Pursuant to section 13 of the *Act*, it was the Landlords' responsibility to ensure there was a written tenancy agreement in place prior to the Tenants moving into the rental unit. The Landlord takes the position that only Tenant G.W. is a tenant; however, there is no further compelling evidence before me to support the Landlord's position on this. I am satisfied that all three Tenants have lived in the rental unit since October of 2018, which is when the materials show the tenancy began. In the absence of a written

tenancy agreement outlining who is a tenant and who is an occupant, I am satisfied all three Tenants are tenants.

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

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

Compensation

Section 7 of the *Act* states:

> 7 (1) If a landlord…does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord…must compensate the [tenant] for damage or loss that results.
>
> (2) A…tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant sought compensation equal to half of the hydro bills paid during the tenancy and half of the hydro bills moving forward on the basis that the hydro bills are too high. The Tenant took the position that the high hydro bills are as a result of the Landlords

using electricity for an internet system in the shed as well as issues with the windows, appliances and skirting.

I am not satisfied based on the evidence provided that the Tenants are entitled to compensation equal to half of their past or future hydro bills for the following reasons.

There is no issue that the Tenants are responsible for paying hydro. Therefore, the Tenants would need to show a breach of the *Act*, regulations or their tenancy agreement that has resulted in increased hydro bills in order to be entitled to compensation for this issue.

In relation to the internet system, the Tenant testified that this had been running from the start of the tenancy. Given this, the Tenants should have been aware of it when the tenancy agreement was entered into. The Tenant did not claim that the Tenants were unaware of the internet system until later in the tenancy. The letter from the Landlord dated November 27, 2019 suggests that the Tenants were aware of the internet system and that rent was reduced because of it. I am satisfied the Tenants would have been aware of the internet system from the outset. I am not satisfied the Landlords breached the *Act*, regulations or their tenancy agreement by having an internet system, that the Tenants were aware of, running in the shed. If the Tenants took issue with the internet system running in the shed or with paying hydro in the circumstances, this should have been addressed at the start of the tenancy and any agreement relating to this put in writing. I do not accept that the Tenants, more than a year into the tenancy, after the internet system has been shut down, are entitled to compensation for whatever electricity the internet system used.

I do not accept that the Landlord agreed to replace the windows in the rental unit as the Tenants have not submitted further evidence to support the Tenant's testimony on this point and the Landlord denies this occurred. I would expect such an agreement to be in writing if it was in fact made and was the basis for Tenant G.W. entering the tenancy.

I accept from the photos that the windows are older and are single pane. However, this is not a breach of the *Act*, regulations or tenancy agreement. Further, this is evident from looking at them and therefore the Tenants would have been aware of this at the outset and are not now entitled to compensation for higher hydro bills based on this.

I do not find the photos sufficient to show the windows are broken; however, I do accept from the photos that one window is cracked and taped.

In relation to the appliances, the appliances not working at all does not increase hydro use which is the issue before me. The Tenant testified that the appliances are old and therefore use more electricity. Having old appliances that use more electricity is not a breach of the *Act*, regulations or tenancy agreement. Further, the photos show the inside of the fridge, microwave and top of the stove. The photos do not support that the microwave is old and do not show the fridge or stove sufficiently to tell if they are old. As well, photos are not sufficient to show increased electricity use.

Based on the photos, I am satisfied the skirting on the home does not go all the way around the home. I am not satisfied this is a breach of the *Act*, regulations or tenancy agreement as the Tenant has not explained why it is a breach of the *Act*, regulations or tenancy agreement.

I have accepted that a window is cracked and taped. However, I am not satisfied based on the evidence provided as to what affect this has had on the cost of hydro. In the circumstances, the Tenants have failed to prove breaches of the *Act*, regulations or tenancy agreement and have failed to prove the amount or value of the damage or loss resulting from the cracked window. Therefore, the Tenants are not entitled to the compensation sought.

Repairs

The Tenant sought repairs of the windows, skirting and appliances including the fridge, dryer and microwave.

Section 32 of the *Act* states:

> 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.

Pursuant to Policy Guideline 1, the Landlord is responsible for the following:

- Providing windows that are in a reasonable state of repair at the start of the tenancy; and
- Repairs to appliances unless the damage was caused by the deliberate actions or neglect of the tenant.

I am not satisfied based on the evidence provided that more than one window is broken. I am satisfied based on the photos that one window is cracked and taped. I am satisfied the one window was not provided in a reasonable state of repair given it is cracked and taped. **Pursuant to section 62 of the *Act*, I order the Landlords to repair the one window that is cracked and taped within one month of the date of this decision.** If the Landlords do not do so within one month of the date of this decision, the Tenants can seek compensation for this.

I am satisfied based on the photos that there is one piece of skirting that has fallen off at the corner of the home. I am satisfied the Landlords are responsible for repairing the skirting. **Pursuant to section 62 of the *Act*, I order the Landlords to repair the skirting that has fallen off within three months of the date of this decision.** If the Landlords do not do so within three months of the date of this decision, the Tenants can seek compensation for this.

I decline to order the Landlords to put skirting around the whole home. This is not a repair issue. The Tenants are asking for skirting to be added where there is none. In order to be entitled to this, the Tenants would need to show the Landlords have failed to comply with section 32 of the *Act* in relation to the lack of skirting. The Tenants have not explained why, or provided evidence showing, the Landlords have breached section 32 of the *Act* in relation to the lack of skirting.

In relation to the fridge, I am not satisfied based on the testimony of the Tenant and photos provided that the fridge is broken. The Tenants have not submitted further evidence showing the fridge is broken. I decline to order the Landlords to repair the fridge.

In relation to the microwave, the position of the Landlord in the letter dated November 27, 2019 is that the Tenants broke the microwave which was working at the outset of the tenancy. I am not satisfied the Tenants are not responsible for the issue with the microwave. The evidence shows the microwave issue was put in writing to the Landlord November 17, 2019. The Tenants' letter states that the microwave stopped working May 15, 2019, well into the tenancy. The Tenants have not provided sufficient evidence showing they are not the cause of the issue with the microwave. I decline to order the Landlords to repair the microwave.

In relation to the dryer, the Landlord's letter to the Tenants dated November 27, 2019 appears to acknowledge the dryer is broken. The letter states that the dryer has a

history of motor problems. The letter states that the Landlords agreed to replace the dryer up to $400.00. I am satisfied the dryer is broken and that this is not due to the Tenants given the letter. It is the Landlords' responsibility to repair or replace the dryer. It is not the Tenants' responsibility to do this. **Pursuant to section 62 of the *Act*, the Landlords are ordered to repair or replace the dryer within three weeks of the date of this decision.** If the Landlords do not do so within three weeks of the date of this decision, the Tenants can seek compensation for this.

Given the Tenants were partially successful in this application, I award them reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct $100.00 from one future rent payment.

Conclusion

The request for compensation for high hydro bills is dismissed without leave to re-apply.

The Landlords are ordered to do the following repairs:

- **Repair the one window that is cracked and taped within one month of the date of this decision;**
- **Repair the skirting that has fallen off within three months of the date of this decision; and**
- **Repair or replace the dryer within three weeks of the date of this decision.**

If the Landlords do not complete the above repairs, the Tenants can seek compensation for this.

The Tenants are entitled to reimbursement for the $100.00 filing fee and can deduct this from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 26, 2020

Residential Tenancy Branch