



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAIRLABEL ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDCT, RR, RP

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; and for a rent reduction.

The Tenant stated that on January 31, 2020 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties both affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Is there a need to order the Landlord to make repairs to the rental unit?
Are the Tenants entitled to compensation as a result of repairs not being made to the unit?

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began in 2019 and that the rent is \$1,400.00 per month.

The Tenants are seeking \$16,600.00 in compensation for various deficiencies with the rental unit, and they are seeking an Order requiring the Landlord to repair any of those deficiencies not yet repaired.

The Tenant and the Agent for the Landlord agree that on November 30, 2019 the Tenants reported that none of the heat registers in this two bedroom unit were functioning and they are still not functioning properly.

The Agent for the Landlord Stated that:

- The boiler in the residential complex is new;
- The heat is working properly in all of the other suites and common areas in the complex;
- Three different companies have attempted to repair the heating system in the rental unit;
- After each company has restored the heat, it works for few days and then it stops working again;
- The Landlord is still attempting to restore heat to the rental unit;
- She offered the Tenants a space heater but was told they already purchased an alternate heat source; and
- The Tenants pay for electricity consumed in the unit.

The Tenant stated that:

- An alternate heat source was never offered to her;
- The Tenants purchased an electric fireplace which they have in the living room as a heat source; and
- The Tenants pay for the cost of using the electric fireplace.

The Tenant and the Agent for the Landlord agree that on January 25, 2020 the Tenants reported seeing cockroaches in the rental unit, and the Landlord sent a pest control company to the unit on February 03, 2020.

The Tenant stated that cockroaches have not been seen since February 03, 2020.

The Tenants are seeking compensation for replacing furniture. The Tenant stated that there is no visible damage to their furniture, they are currently using the furniture that has been in contact with cockroaches, but they do not want to move it to a new home if they move out of the rental unit.

The Tenant and the Agent for the Landlord agree that on January 27, 2020 the Tenants reported that the hot water intermittently becomes scalding hot when the shower is being used. The Tenant stated that this occurs every time the shower is used and that it has not been repaired.

The Agent for the Landlord stated that a plumber inspected the hot water system in the residential complex and determined that it was functioning properly. She stated that a

plumber has not inspected the rental unit itself to determine if the plumbing inside the unit is working properly.

The Tenant and the Agent for the Landlord agree that on November 30, 2019 the Tenants reported that the oven was not working properly, and that the oven was not replaced until sometime in February of 2020.

The Tenant contends that there is a 1'X1' square on the patio that is rotting. The Agent for the Landlord stated that there is a soft spot in the patio that is approximately 15cm X 5 cm, which the Landlord plans to repair when the weather improves.

The Agent for the Landlord and the Tenant agree that on January 23, 2020 the smoke alarms were removed from the rent unit. The Tenant stated that the smoke alarms have not yet been replaced. The Agent for the Landlord stated that she was not aware they had not been replaced and she will ensure they are replaced.

Analysis

Section 32(1) of the *Residential Tenancy Act (Act)* requires landlords to 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. It is commonly understood that this section requires landlords to ensure that the heating source in a rental unit remains functional.

On the basis of the undisputed evidence, I find that the Tenants have not had a consistent, functional heat source in the rental unit since November 30, 2019. I therefore Order the Landlord to make immediate arrangements to have a qualified tradesperson investigate the heat source and to continue to make diligent efforts to repair the heat source, until such time as it is repaired.

Section 28 of the *Act* grants tenants a right to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6, with which I concur, reads, in part:

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.

In many respects the covenant of quiet enjoyment is related to the requirement on the landlord to maintain a rental unit in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment when a deficiency with the unit impacts the comfortable occupation of the unit.

I find that living in a rental unit without a functional heat source is a significant breach of the right to quiet enjoyment, particularly during winter months. While I accept that the Tenants had the use of an electric fireplace in the living room, these are not known to be a particularly effective heat source. While this fireplace may have provided heat in the living room, it is unlikely it provided adequate heat to the other areas in the rental unit. Even if it did provide adequate heat in the living room, it required the Tenants to purchase and use an alternate heat source, which in itself is an inconvenience.

Residential Tenancy Policy Guideline 6 suggests that a tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations. I accept the Agent for the Landlord's testimony that the Landlord has been attempting to repair the heat source in the rental unit, however the undisputed evidence is that the Landlord has failed in those attempts. In spite of the Landlord's efforts to repair the heat source, I find that the Tenants are entitled to compensation for living without a proper source of heat.

I find the heat source to be a significant breach of their right to the quiet enjoyment of the rental unit, which has reduced the value of the tenancy by approximately 25%. I therefore find that the Tenants are entitled to a rent refund of \$350.00 per month for the period between the December 01, 2019 and April 30, 2020, which is \$1,750.00.

I further find that the Tenants have the right to reduce all future rent payments by \$350.00 on the first day of each month, with the exception of July and August, until such

time as the Landlord has ensured that the rental unit is provided with a proper, fully functional heat source. The Tenants are not granted compensation for July and August, as heat is not typically required during those months. For clarity, I do not consider space heaters or electric fireplaces to be a proper heat source.

On the basis of the undisputed evidence, I find that nine days after a cockroach problem was reported to the Landlord, the Landlord arranged to have a pest control company treat the rental unit for cockroaches. I find that the Landlord complied with their obligation to treat the pests within a reasonable time of receiving a report of the problem.

As suggested by Residential Tenancy Branch Policy Guideline 6, temporary discomfort or inconvenience does not constitute a breach of the entitlement to quiet enjoyment. I find that waiting nine days for a pest control treatment constitutes a temporary discomfort, for which the Tenants are not entitled to compensation.

I find that the Tenants submitted insufficient evidence to establish that their furniture was damaged by cockroaches. In reaching this conclusion I was heavily influenced by the Tenant's testimony that there is no visible damage to their furniture. In the absence of any evidence to establish that furniture is typically damaged by simply coming into contact with cockroaches, I find that the Tenants have failed to establish that they suffered a physical loss related to cockroaches. I therefore find that they are not entitled to compensation for damaged furniture.

On the basis of the undisputed evidence, I find that the hot water intermittently becomes scalding hot when the shower is being used. I find, pursuant to section 32(1) of the *Act*, the Landlord has an obligation to ensure that plumbing fixtures in a rental unit are functioning in a manner that do not harm occupants of the unit. I therefore Order the Landlord to have a plumber inspect the shower in the rental unit and to ensure the plumbing fixtures are working properly.

I find that the issue with the hot water constitutes a breach of the right to quiet enjoyment which has reduced the value of the tenancy by approximately 5%. I therefore find that the Tenants are entitled to a rent refund of \$70.00 per month for the period between the December 01, 2019 and April 30, 2020, which is \$350.00.

I further find that the Tenants have the right to reduce all future rent payments by \$70.00 on the first day of each month, until such time as the Landlord has repaired the

problem with the hot water OR until such time the Landlord provides the Tenants with a written declaration from a plumber that certifies the shower is functioning properly.

On the basis of the undisputed evidence, I find that the Tenants lived without a properly functioning oven for more than two months. I find that this was a breach of the right to quiet enjoyment which has reduced the value of the tenancy by \$50.00.

I find that the Tenants have submitted insufficient evidence to show that the patio is not being maintained 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. Although both parties acknowledge there is a relatively small soft spot on the patio, I find there is no evidence, such as a photograph or a declaration from a tradesperson, that corroborates the Tenants' submission that this area is unsafe.

As I have insufficient evidence to conclude that the patio is not being maintained in a manner that complies with section 32(1) of the *Act*, I do not find it necessary to Order the Landlord to repair the patio. As there is insufficient evidence to conclude that the patio is unsafe, I cannot conclude that the Tenants are entitled to financial compensation as a result of the condition of the patio.

On the basis of the undisputed evidence, I find that the smoke alarms in the rental unit were removed on January 23, 2020. I find, pursuant to section 32(1) of the *Act*, the Landlord has an obligation to ensure that the rental unit is equipped with smoke alarms that comply with local building standards. I therefore Order the Landlord to install smoke alarms that comply with local building standards.

I find that being without smoke alarms did for three months does not have a significant impact on a tenant's right to quiet enjoyment and I therefore find the Tenants are not entitled to financial compensation as a result of being without smoke alarms.

Conclusion

The Landlord is obligated to comply with the repair Orders issued in this decision.

The Tenants have established they are entitled to a rent reduction of \$2,150.00 and I grant the Tenants a monetary Order for that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Both parties are advised that if the Tenants prefer not to enforce the monetary Order, they have the right to withhold \$2,150.00 from future rent payments, pursuant to section 75(2)(a) of the *Act*.

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: April 06, 2020

Residential Tenancy Branch