



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHARTWELL CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 27, 2020 (the "Application"). The Tenants applied for a repair order and an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenants appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties confirmed the correct rental unit address which is reflected on the front page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

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 documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to a repair order?
2. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started November 01, 2010 and is a month-to-month tenancy.

Repairs

The Tenants sought repair of four leaking windows in the rental unit.

The Tenants confirmed they had sought repair of the same four windows in File Number 1. The Tenants confirmed the video of the windows submitted for this hearing was also submitted on File Number 1.

The Tenants acknowledged receipt of an email inspection report for the windows submitted by the Landlord. The Tenants pointed out that the inspection shows there is high humidity in the rental unit. The Tenants could not point to where in the email inspection report it shows the windows are leaking.

The Tenants submitted that the email inspection report is not reliable and that they spoke to someone at the company that did it who could not confirm the email inspection report. The Tenants did not submit evidence to support this position.

The Tenants submitted that the email inspection report is not an official report and that the official report is the Invoice submitted. The Tenants took the position that the Invoice shows the windows are leaking.

The Tenants submitted that the inspection of the windows was not done properly because it was dry and sunny when it was done. The Tenants testified that the windows leak when it is raining.

The Tenants submitted that the inspection was not independent because the Landlord hired the company to do the inspection.

I understood the Tenants to say that the person who inspected the windows did say they were leaking.

I asked the Tenants if they had submitted evidence showing something with the windows has changed since the inspection was done. The Tenants testified that there is now evidence of mold around the windows. The Tenants submitted that

condensation cannot cause mold and that the mold can only be due to the leaking windows. The Tenants submitted that the location of the mold shows that the area around the windows is leaking and the issue is not condensation. The Tenants submitted that there might be an issue with the windows and the walls.

The Agent testified as follows. The Landlord did what was required by the Arbitrator on File Number 1. The email inspection report shows the issue is high humidity and condensation and provides suggestions to deal with this. The mold is from the high humidity in the rental unit. The Tenants are not addressing the issue. The windows are not leaking. The Invoice and email inspection report are from the same company. The email inspection report has not been altered or changed. The video submitted by the Tenants is deliberately extreme. The video shows condensation coming from the top to the bottom of the window and does not show the sides of the window are leaking.

Landlord to comply

The Tenants sought an order in relation to paying rent by cash. This issue had been raised in previous hearings. At this hearing, the parties came to an agreement about the matter as follows:

The Landlord has given the Tenants permission to deposit cash into the Landlord's bank account (at the bank noted on the front page of this decision) for monthly rent. This is an acceptable form of payment moving forward. The Tenants are to indicate the building name and rental unit number on the deposit slip.

Both parties were agreeable to dealing with this issue as outlined above.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, 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.

Repairs

The Landlord's obligations in relation to maintaining the rental unit are set out in section 32 of the *Act* which 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.

The Arbitrator on File Number 1 ordered the following:

As such, I order the Landlord to have all the windows within the rental unit inspected, by a qualified contractor of their choosing, within 1 month of the date of this decision. If leaks are discovered, the Landlord must fix the leaks forthwith. As long as the Landlord is providing the Tenants with proper notice to come and assess the windows, the Tenants are not able to deny entry or otherwise interfere with this assessment.

The Landlord submitted the email inspection report dated December 06, 2019 from the company that inspected the windows in the rental unit. The report does not support that the windows are leaking and indicates the issue is condensation.

The Invoice does not show that the windows are leaking. I understand it to refer to investigating window leaks because that is the reason the company attended the rental unit. It is not a conclusion that the windows are leaking and the Invoice states that the issue is condensation.

I find the email inspection report submitted reliable. The report shows the author and date it was sent. The report is detailed. The Agent testified that the report has not been altered or changed. I did not have any concerns about the reliability or credibility of the Agent during the hearing.

It is not sufficient for the Tenants to appear at the hearing and simply testify that the email inspection report is not reliable. I would expect to see some evidence to support

this. The Tenants did not point to something in the report that calls it into question. The Tenants testified that they spoke to someone from the company and this caused them to question the email inspection report. However, the Tenants did not submit evidence to support this such as documentary evidence from the company indicating there is an issue with the email inspection report. Further, the email inspection report seems to accord with the Invoice, which the Tenants relied on as accurate.

There is insufficient evidence before me to show the window inspection was not done properly. It was done by a roofing and flooring company. The email inspection report indicates that "thorough water testing" of the windows was done. The Tenants have not submitted evidence to show the inspection was not done properly such as video or audio of the inspection calling into question what was done or a report or assessment from a qualified professional calling into question how the inspection was done. I do not find it sufficient for the Tenants to testify that the inspection was not done properly without providing some further evidence to support this.

I do not accept that the person who did the inspection said the windows are leaking. This is not reflected in the email inspection report or Invoice. The Tenants did not submit evidence from the person to support this.

I am not satisfied the windows are leaking on the basis of the video submitted as it was taken prior to the email inspection report.

I accept based on the photo submitted that there is mold on a wall of the rental unit. Mold is caused by moisture. The Tenants have not submitted sufficient evidence to show the mold is due to leaking windows and not condensation. I cannot tell the cause of the mold from a photo. I would expect to see a report or assessment from someone qualified to determine the specific cause of the mold. In the absence of further information and evidence showing the mold is caused by leaking windows, I am not satisfied it is.

I accept the email inspection report as accurate. I am satisfied based on it, and the Invoice, that the windows are not leaking. The Tenants have not submitted compelling evidence that the windows are leaking such as a report or assessment that contradicts the email inspection report provided by the Landlord. This is the type of evidence I would expect the Tenants to provide if they disagree with the conclusions in the email inspection report.

In the circumstances, I am not satisfied the windows are leaking. Therefore, I am not satisfied the Tenants are entitled to an order that the Landlord repair leaking windows. The request is dismissed without leave to re-apply.

Landlord to comply

The parties came to an agreement about this issue as set out above and therefore I have not addressed this issue further.

Conclusion

The request for an order that the Landlord repair four leaking windows in the rental unit is dismissed without leave to re-apply.

The request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement has been dealt with by agreement of the parties. I have not addressed this issue further.

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: June 11, 2020

Residential Tenancy Branch