



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OLC, RP, RR, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order directing the landlord to have repairs done, comply with the *Act* and reduce rent. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. The parties represented themselves. I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Has the landlord fulfilled his responsibilities as a landlord with regard to maintenance and repairs? Is the tenant entitled to a rent reduction and the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started in September 2013. The rental unit consists of an apartment in a building complex that houses 217 apartments. The building is approximately 48 years old. The monthly rent is \$1,395.00 payable in advance on the first of the month.

The tenant's main complaint was that the building was not properly maintained and was being advertised as having facilities that were not available for use. The tenant applied for a rent reduction of \$558.00 per month. Each of the tenant's complaints were addressed during the hearing.

Hot Tub and Pool

The tenant stated that the hot tub was unavailable for use from September 2019 to November 2019. In February 2020, the hot tub was shut down due to a leak and then again in March 2020 and remains closed for an indefinite period, due to the Pandemic.

The landlord submitted that new regulations came into effect in July 2019 to correct a suction hazard of the hot tub. The landlord had to make improvements to the mechanical and electrical components to eliminate the risk of human hair or clothing getting caught in the main drains. The landlord stated that the repair work and engineering fee combined cost around \$25,000 and took several months to complete.

The landlord stated that in March 2020, management followed health official recommendations and suspended the use of some of the amenities like the hot tub and pool to prevent the transmission of COVID-19. The landlord added that the pool is closed during the fall and winter every year.

Roof

The tenant stated that the roof was leaking in parts of the building but agreed that her rental unit was not affected by the leaks.

The landlord testified that the roof is 48 years old and the landlord intends to replace the roof. The landlord is currently in the process of obtaining quotes to do so. The landlord added that there was a leak detected in February 2020 and it was repaired within hours of detection.

The tenant also complained of a leak by the mailboxes. The landlord stated that they had a plumber in more than 5 times in the last three months to detect the source of the drip and carry out repairs. The tenant agreed that the problem has been resolved.

The landlord filed copies of the plumber's invoices.

Mould

The tenant complained about the possibility of mould in the rental unit. The landlord stated that he had the unit inspected. Moisture readings collected off the walls were taken and were deemed to be "bone dry". The tenant agreed that mould is not an issue at this time.

Mice and Silverfish

The tenant stated that she saw mice in the main lounge and that there are silver fish in her apartment.

The landlord testified that a pest control company has been retained since October 2019 to carry out regular inspections and treatments inside the building and around the exterior which also includes the garden. The landlord added that he acted immediately on the tenant's complaint of a mouse sighting. The landlord stated that he will arrange for the pest control company to treat the rental unit for silver fish. The landlord filed a copy of his contract with the pest control company.

Security

The tenant was concerned about the distribution of master keys to the various employees of the landlord and requested permission to change the lock on her front door. The landlord stated that even though it is inconvenient for his staff to handle separate keys for different units, he agreed to allow the tenant to change the lock if she provided him with a key. The tenant agreed that she was granted permission but had not changed the lock as of the date of this hearing.

The landlord provided a copy of his contract with the security agency for monitoring services. The service includes patrolling the property twice a day.

Washroom by the pool

The tenant stated that a washroom by the pool has been out of order for a few months. The landlord stated that the residents have access to four other washrooms in the area and agreed to have the washroom repaired at his earliest.

Elevators

The tenant stated that often one of the two elevators is being repaired and not available for use. However, the tenant agreed that at no time was she without the use of at least one elevator.

Garden

The tenant complained of poor upkeep and maintenance of the outdoor areas. The tenant also stated that water was pooling in the creek which could bring mosquitoes.

The landlord stated that he has contracted a landscape company to maintain the garden and has not received any complaints from the other residents. The garden service includes weekly visits and completion of a variety of landscaping and gardening work. The landlord agreed to speak with the landscaper and address the flow of water in the creek and the removal of debris.

The landlord has filed into evidence, photographs of the garden and a copy of his contract with the landscaping company.

Analysis

Section 32 of the *Residential Tenancy Act*, addresses the landlord and tenant obligation to repair and maintain the rental unit.

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.

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.

Regarding the use of the hot tub and pool the landlord stated that the hot tub had to undergo improvements to be in compliance with the health and safety standards and therefore was closed for a considerable amount of time. In March 2020, the landlord was ordered to close the hot tub and pool due to the pandemic. Therefore, these facilities were not available to the tenant due to a Province wide order, upgrading and maintenance.

I find that by shutting down the hot tub and pool, the landlord was simply carrying out his responsibilities to provide and maintain these facilities in a condition that complies with the health, safety and housing standards and to be in compliance with the Provincial orders during the Pandemic to prevent transmission of the virus. Therefore, the tenant is not entitled to compensation from the loss of use of the hot tub and pool.

I accept the landlord's testimony that the leaks from the 48-year-old roof were repaired immediately and sometimes within hours of detection. The landlord stated that he intends to replace the roof and is in the process of obtaining quotes to do so. The tenant agreed that there were no leaks in her rental unit. I find that the landlord has fulfilled his responsibilities as a landlord by carrying out repairs in a timely manner and by planning to replace the roof.

The landlord filed documentation to support his testimony regarding action taken to stop the drip outside the mailboxes. The tenant agreed that the problem has been taken care of. Therefore, I find that the landlord responded to the tenant's complaints and carried out the necessary repairs.

I accept the landlord's testimony that he responded to the tenant's complaint of possible mould in the rental unit and had the unit tested. The test results were negative.

The landlord filed copies of his contracts with companies that provide security services, pest control services and landscaping maintenance. The contracts provide details of the services provided to keep the property secure, pest free and landscaped. The photographs of the outdoor areas filed by the landlord into evidence, indicate that the garden is well maintained.

I accept the landlord's testimony that he has staff on payroll that respond to complaints and requests within 48 hours.

Based on the contracts, invoices and photographs filed into evidence and testimony of both parties, I find that the landlord has maintained the 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 the tenant.

I further find that the landlord fulfilled his obligations by acting on the complaints he received, in a timely manner and by making improvements to the property to be in compliance with the health, safety and housing standards.

I find that the tenant has not proven that the landlord failed to meet his obligations under the *Act* with regard to maintaining services and facilities that are essential to the tenant's use of the rental unit as living accommodation.

The tenant agreed that most of her complaints were related to other areas of the building complex and were no longer an issue. Therefore, the tenant's application for an order directing the landlord to carry out repairs is moot.

Based on the sworn testimony of both parties and documents filed into evidence, I find that the tenant has not proven negligence on the part of the landlord and therefore has not proven an entitlement to a rent reduction.

Since the tenant has not proven her claim, she must bear the cost of filing her application.

Conclusion

The tenant's application is dismissed in its entirety.

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: July 02, 2020

Residential Tenancy Branch