



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, PSF, RR, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- An order for the Landlord to complete repairs;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Compensation for monetary loss or other money owed.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Agent acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, as well as the Tenant’s documentary evidence, and raised no concerns regarding its acceptance or consideration in this matter. The Tenant also acknowledged receipt of the Landlord’s documentary evidence and raised no concerns regarding its acceptance or consideration in this matter. As a result, I have accepted all the documentary evidence before me from both parties for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Preliminary Matter #1

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant sought orders for the Landlord to complete repairs and provide services and facilities required by the tenancy agreement or law, I find that the priority claims relate to whether repairs need to be completed or services or facilities provided. I find that the remaining claims are not sufficiently related to whether repairs are required, or services or facilities have been withheld or restricted, and I therefore exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Compensation for monetary loss or other money owed.

As a result, the hearing proceeded based only on the Tenant's Application seeking orders for the Landlord to complete repairs and provide services and facilities agreed upon by the tenancy agreement or law.

Preliminary Matter #2

The Agent for the Landlord stated that the correct legal name for the Landlord has not been properly set out in the Application and provided me with the correct legal name for the Landlord. With the consent of the Tenant, the Application was amended to reflect the correct legal name for the Landlord.

Preliminary Matter #3

Although the Agent stated that the Tenant's documentary evidence in relation to rent increases as well as copies of several emails and text messages was received by them less than 7 days before the scheduled date for the hearing, contrary to rule 3.15 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), ultimately, they acknowledged having sufficient time to consider and respond to it. Based on the above, I find that the acceptance of the Tenant's late evidence does not unreasonably

prejudice one party or result in a breach of the principles of natural justice, and pursuant to rule 3.17 of the Rules of Procedure, I therefore accept it for consideration.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to complete repairs to the unit, site or property?

Is the Tenant entitled to an order for the Landlord to provide services and facilities required by the Tenancy agreement or law?

Background and Evidence

The 12 month fixed-term tenancy agreement in the documentary evidence before me states that the tenancy began on June 1, 2017, and became month to month after the end of the fixed term on May 31, 2018. It also states that rent is due on the first day of each month, that rent at the start of the tenancy was \$1,950.00, and that a security deposit in the amount of \$975.00 was paid. During the hearing the parties confirmed that these are the correct terms for the tenancy agreement except for the amount of rent now payable under the tenancy agreement, which has increased since the start of the tenancy.

There was no dispute between the parties that a leak arising in December of 2019 has caused bucking in the flooring of one of the bedrooms in the rental unit, other water related damage, such as the growth of fungus in a nightstand, and possibly the growth of mould. Neither party argued that the leak was the fault of the other. The Landlord's position is that the leak likely originated in common strata property or limited common strata property outside of the rental unit, areas over which the Landlord does not have direct control, whereas the Tenant remains unsure of what has caused the leak. The parties were not in agreement as to the extent of the damage done, the remediation repairs required, the nature and duration of any necessary repairs, and whether any repairs necessary could be completed while the tenancy was ongoing and without vacant possession.

The Tenant stated that despite repeated efforts to have the issues dealt with, the Landlord has refused to adequately address the leak or the repairs required to the rental unit as a result of the leak, and that the issue only became "urgent" to the Landlord shortly before the Tenant filed their claim with the Residential Tenancy Branch (the "Branch") on June 8, 2020. The Tenant stated that their daughter has been forced to

vacate their bedroom and reside in the living room for the past 6 months as a result of the water damage, as the buckling in the flooring is so severe it caused her to trip repeatedly, there is likely mould under the flooring, and because a nightstand located close to the wall where the leak originated became so contaminated with fungus, it needed to be disposed of.

The Tenant stated that the Landlord has breached their obligations to repair and maintain the rental unit under section 31 of the *Act* and instead, has repeatedly told them to move out instead of completing the necessary repairs. The Tenant stated that they enjoy the rental unit and wish to continue residing there. They stated that they are not in a financial position to move, nor is it their responsibility to move, and that it is the Landlord's responsibility to make the necessary repairs. The Tenant also stated that they are willing to vacate the rental unit, if necessary, for short periods of time, to have the repairs completed, and that they anticipate that the repairs could be done in as little as a few days. As a result, the Tenant is seeking an order from the Branch for the Landlord to complete all necessary repairs to the interior of the rental unit related to water ingress, including but not limited to: the removal and replacement of affected flooring, the removal and replacement of affected drywall and the remediation of any mould or fungus present in the rental unit.

The Agent asserted that the strata corporation is still in the process of investigating the cause of the leaks, which likely originate on common strata property or limited common strata property, and as a result, the strata corporation has some trepidation about the commencement of repairs to the interior of the rental unit. Further to this, the Agent argued that it is the Landlord's position that vacant possession of the rental unit will be required to complete any repairs, due to the nature and extent of the issues, such as the removal of drywall and the removal and replacement of all flooring, as well as the remediation of any mold, which likely is not restricted to the one bedroom. The Agent argued that as a result, the Landlord believes that the tenancy is in fact frustrated, that no repair orders should be made while the tenancy is ongoing, and that the Tenant is placing the Landlord's property at risk by failing to vacate so that the leak can be properly assessed, and the repairs completed.

The Agent also disagreed with the Tenant that the Landlord has not been taking the issue seriously and stated that they have repeatedly contacted the strata corporation for action and resolution without success, that the Landlord has recently employed their own restoration company to look into the matter, and that efforts for investigation and repair have been hindered by COVID-19.

The Tenant responded by stating that only recent efforts on the part of the Landlord would have been restricted by COVID-19, and that had the Landlord acted expediently and urgently with regards to the issue when they first became aware of it in December of 2019, COVID-19 would have had little or no impact on the Landlord's ability to assess the issues and complete any necessary repairs.

Both parties pointed to the relevant documentary evidence before me in support of their position, consisting of photographs, emails, text messages and written submissions

Analysis

The report completed on June 10, 2020, by the restoration company hired by the Landlord states that further investigation is required to determine if the moisture in the flooring is the result of an ongoing leak and recommended removal of the flooring in the affected bedroom by the window as well as all damp flooring in order to assess water ingress, to assess whether there is any mold growth, and to dry out the concrete under the flooring. The report completed on June 9, 2020, by the restoration company hired by the strata corporation recommended the removal of the baseboard below the window in the affected bedroom to inspect for damage.

Although the Agent argued that vacant possession of the rental unit is required to complete necessary repairs and therefore no repair orders should be made while the tenancy is ongoing, I do not agree. There appears to be no evidentiary basis for that assertion in the documentary evidence before me, which clearly shows that little to no work has been done on the part of the Landlord to assess the nature and extent of the damage, let alone actually repair it, as the wet and damaged flooring, baseboards, and drywall have not been removed. As a result, I find that it is premature of the Landlord to argue that vacant possession will be required for any necessary repairs to be completed as it is unclear at this point what repairs are necessary.

Section 32 (1) states that landlords must 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.

While the Agent argued that the strata corporation has delayed the completion of investigations and that the strata corporation has trepidations about the completion of interior repairs as a result of the lack of confirmation regarding what caused the leak, neither the Agent nor the Landlord have submitted any documentary or other evidence

from the strata corporation in support of this argument. Although the Agent provided self-authored written submissions regarding their efforts to contact the strata corporation as well as some email correspondence sent to the strata corporation with regards to the leak, this documentary evidence does not satisfy me on a balance of probabilities that either the strata corporation is the cause for any delays or that the strata corporation is preventing the Landlord in any way from completing repairs or assessments to the interior of the rental unit, which is the Landlord's exclusive property.

While I appreciate that landlords have no direct control over the completion of repairs on common strata property or in some cases, limited common strata property, such as the exterior of the building or piping in the walls, I find that they remain in control over the majority of repairs that would be required inside of rental units themselves, pursuant to Residential Tenancy Policy Guideline #21. Although the Landlord may be in dispute with the strata corporation as to who is ultimately responsible for the cost of any repairs, depending on where it is determined that the leak originated, the Landlord may make a claim against the strata corporation in the appropriate forum should they wish to do so. As a result, the financial dealings and obligations between the Landlord and the strata corporation is not a Residential Tenancy Branch Matter and is therefore not a consideration in my determination of whether the Landlord is required to complete repairs to the interior of the rental unit under the *Act*.

Pursuant to section 32 (1) of the *Act*, the Landlord *must* provide and maintain the residential property over which they have control 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.

I am satisfied by the documentary evidence and testimony before me for consideration from the parties that the rental unit requires repairs and that these repairs are the Landlord's obligation under to section 32 (1) of the *Act*. As a result, I grant the Tenant's Application seeking orders that the Landlord complete repairs and provide services or facilities required by the tenancy agreement or law; such as a functional and habitable rental unit in good repair.

As the Tenant was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. The Tenant is entitled to deduct \$100.00 from the next months rent payable under the tenancy agreement in recovery of the filing fee, should they wish to do so, or to serve and enforce the attached Monetary Order, but not both.

As the full extent of the repairs is unknown at this time, due at least in part to the Landlord's failure to act diligently and expediently in response to the Tenant's requests for repairs and their premature assumption that the tenancy is frustrated and/or that vacant possession of the rental unit is required, my orders will focus first on determining the nature and extent of any repairs required, and then on the completion of these required repairs.

Based on the above, I make the following orders:

- I order the Landlord to, within 30 days of the date of this decision, proceed with the further investigation steps outlined in the letter dated June 10, 2020, from the contractor they hired (X.B.S.), as well as any and all other reasonable steps necessary to determine the nature and extent of repairs required to the interior of the rental unit as the result of water damage. The Landlord may have this work/investigation completed by X.B.S. or another qualified professional of their choosing in good standing in the community.
- I order the Landlord to begin any required repairs identified as a result of the above noted investigation as soon as possible, and not later than 30 days from the date they receive notification from the contractor that these repairs are required.
- I order the Landlord to complete any repairs as soon as possible, and not later than 30 days after their commencement.

The Landlord should be aware that failure to comply with this decision and orders could result in administrative penalties of up to \$5,000.00 per day. Both parties should also be aware that this decision does not change either party's right's under section 49 (6) (b) or 56.1 of the *Act*.

Conclusion

Pursuant to section 72 (2) (a) I authorize the Tenant to deduct \$100.00 from the next months rent payable under the tenancy agreement. In the alternative, I grant the Tenant a Monetary Order in the amount of **\$100.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The Tenant is entitled to either deduct the \$100.00 from rent or to serve and enforce the monetary order, but not both.

The Landlord is ordered to comply with this decision and the orders contained therein.

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 13, 2020

Residential Tenancy Branch