



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, LRE, OLC, RP, FFT

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:

- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order restricting or setting conditions on the Landlords’ right to enter the rental unit;
- An order for the Landlords to comply with the *Act*, regulation or tenancy agreement;
- An order for the Landlords to complete repairs; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, and the occupant, both of whom provided affirmed testimony. No one attended on behalf of the Landlords. The Tenant and occupant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application and Notice of Hearing. As no one attended the hearing on behalf of the Landlords, I confirmed service of these documents as explained below.

The Tenant and occupant testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the Tenant’s documentary evidence, was sent to the Landlords at the address for service listed in the tenancy agreement, by registered mail on July 2, 2020, and provided me with the registered mail tracking number set out in the style of cause for this decision. The Canada Post website confirms that the registered mail was sent as described above and delivered to a mailbox on July 3, 2020. Although the registered mail indicates it was delivered on July 3, 2020, I note that it was delivered to a mailbox rather than served in person. As a result, I therefore deem it received three days later, on

July 6, 2020, in accordance with section 90 (d) of the *Act*. As a result, I accepted the Tenant's documentary evidence for consideration and the hearing proceeded as scheduled, despite the absence of the Landlords, pursuant to rule 7.3 of the Rules of Procedure.

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

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

Preliminary Matters

Although two persons were named on the Application, only the applicant J.B is a Tenant. The Applicant P.B. is an occupant of the rental unit and there is a previous decision to that effect from the Residential Tenancy Branch (the "Branch") dated May 6, 2020. As the occupant has no rights or obligations under the *Act*, I therefore name only the Tenant, J.B. in this decision and order(s).

Issue(s) to be Decided

- Is the Tenant entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided?
- Is the Tenant entitled to an order restricting or setting conditions on the Landlords' right to enter the rental unit?
- Is the Tenant entitled to an order for the Landlords to comply with the *Act*, regulation or tenancy agreement?
- Is the Tenant entitled to an order for the Landlords to complete repairs?
- Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant and occupant stated that they previously sought resolution from the Branch with regards to cancellation of a One Month Notice to End Tenancy for Cause (the "One Month Notice"), an order for the Landlords to comply with the *Act*, regulation, or tenancy agreement and a request for repairs. The Tenant and occupant stated that a decision was rendered by an Arbitrator with the Branch on May 6, 2020, wherein the One Month

Notice was cancelled, and the Landlords were ordered to complete required assessments and repairs in relation to mould in the rental unit within specific timeframes. A copy of this previous decision was provided to me by the Tenant for review and consideration.

The Tenant and occupant stated that although one of the Landlords and a mould specialist attended the rental unit on May 20, 2020, the last day of the specified period for doing so in the previous decision, no copy of the assessment/report has been provided to them despite repeated attempts to obtain a copy from both the Landlords and the mould specialist. The Tenant and occupant stated that the Landlords have simply ignored their requests and that the mould specialist could not release a copy to them as it was the Landlords who paid for the service.

The Tenant and occupant stated that they know remediation and repair work is required, as they were present when the mould inspection was completed, and could hear the mould specialist on the phone with their supervisor asking for clarification on what to do, as the mould problem behind the drywall cut-out by the specialist for the assessment was extensive. The Tenant and occupant stated that they have also looked through the hole and can see that there is mould behind the drywall. Further to this, they stated that no remediation work or repairs have been done since the assessment was completed on May 6, 2020, over 2 months ago.

The Tenant and occupant stated that instead of completing the repairs as ordered by the Arbitrator in the May 6, 2020, decision, the Landlords have repeatedly told them to just move out and have now served them with a Two Month Notice to End Tenancy for Landlord's Use of Property, alleging that their child will occupy the rental unit. The Tenant and occupant stated that this is clearly an attempt to avoid their obligations to repair and maintain the rental unit, as the Landlords were previously unsuccessful at ending the tenancy with a One Month Notice to End Tenancy for Cause, and have done none of the required repairs ordered by the Branch in the May 6, 2020, decision.

The Tenant sought a \$1,100.00 per month rent reduction, effective from December 2019, forward, for loss of use, and loss of quiet enjoyment, as well as the Landlords' failure to complete necessary repairs, even after being ordered to do so by the Branch. The Tenant and the occupant stated that they recognize that this is a significant rent reduction, as it represents half of the monthly rent payable under the tenancy agreement, but stated that they have been unable to use one bedroom and all storage areas of the rental unit due to mould and that the occupant has had to sleep in the living

room since December 2019, significantly reducing both the Tenant and the occupants use and quiet enjoyment of the rental unit.

The Tenant sought an order for the Landlords to comply with the *Act*, regulation, or tenancy agreement by way of completing the repairs previously ordered by an Arbitrator with the Branch on May 20, 2020, as well as an order compelling the Landlords to provide them with the mould specialists report.

The Tenant also sought an order restricting or setting conditions on the Landlords' right to enter the rental unit. Specifically, the Tenant sought an order that the Landlords and any contractors/workers entering the rental unit to complete assessments or repairs, wear proper personal protective equipment (PPE) for covid19 when in the rental unit. The Tenant requested that the minimum level of PPE used be a mask, gloves, shoe covers and or coveralls. The Tenant also wanted the Landlords to provide them with 48 hour written notice prior to entry and indicate the reason for entry on the notice. Further to this, the Tenant requested that the Landlords be compelled to provide them with proof of the qualifications of any contractors/workers entering the rental unit and authorization to deny entry to Landlords or their contractors/workers who have been violent or abusive to the Tenant and occupant in the past.

Although I am satisfied that the Landlords were served notice of the hearing and a copy of the Application and the documentary evidence before me from the Tenant, no one appeared on behalf of the Landlords to provide any evidence or testimony for my consideration.

Analysis

Section 32 (1) of the *Act* states that a landlord 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.

Further to this, an Arbitrator with the Branch rendered a decision on May 6, 2020, wherein they ordered the Landlords to do the following:

- Within two weeks of the date of the decision, the landlords shall have a qualified mould specialist inspect the rental unit and perform all necessary testing to determine the air quality, locations of mould, and cause(s) of the mould.

- Within a reasonable amount of time after the inspection and testing described above, the landlords shall make the repairs in accordance with the recommendations of the qualified mould specialist.
- Upon request by the tenant, the qualifications of the mould inspector shall be presented to the tenant.

I accept the affirmed and undisputed testimony of the Tenant and occupant that the mould specialist attended the rental unit on May 20, 2020, for the purpose of completing the above ordered testing of air quality, and to determine the locations and cause of the mould. I also accept their affirmed and undisputed testimony that the Landlords have neither provided them with a copy of the mould specialists report and recommendations for remediation, nor completed any further assessments, remediation, or repairs.

I find that the Landlords are therefore in breach of both section 32 (1) of the *Act* and the previous orders from the Branch requiring them to make repairs in accordance with the recommendations of the qualified mould specialist within a reasonable amount of time after the inspection and testing is complete, as I find that the 60+ days elapsed between the date the mould specialist attended the rental unit and the date of the hearing, represents more than a reasonable amount of time for the Landlords to have commenced and completed any necessary repairs and remediation as ordered by the Branch.

I therefore order the Landlords to provide the Tenant with a copy of the mould specialists report as soon as possible, and not later than 5:00 P.M. on Monday August 3, 2020. I also authorize the Tenant to accrue a \$10.00 per day rent reduction for each day the Landlords fail to provide them with the mould specialists report as ordered, after Monday August 3, 2020. The Tenant will be entitled to deduct any applicable rent reduction as a result of the Landlords' failure to comply with this order from the next months rent payable under the tenancy agreement or to otherwise recover this amount from the Landlords.

I order the Landlords to commence the necessary mould remediation and repairs to the rental unit in accordance with the recommendations of the qualified mould specialist as soon as possible, and not later than August 15, 2020, and to have them completed within 30 days of commencement. I also order that any remediation and repairs be completed by qualified professionals in good standing in the community and that proof of these qualifications be provided to the Tenant at or before the time of any scheduled entry to the rental unit by these professionals. I authorize the Tenant to accrue an additional \$10.00 per day rent reduction for each day after August 15, 2020, that the

Landlords fail to commence the necessary mould remediation and repair work and an even further \$10.00 per day rent reduction for each day after the 30 allowable days for completion, that the repairs and remediation work remains incomplete. The Tenant will be entitled to deduct any applicable rent reduction as a result of the Landlords' failure to comply with these orders from the next months rent payable under the tenancy agreement or to otherwise recover this amount from the Landlords.

Further to this, section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the documentary evidence before me and the uncontested and affirmed testimony of the Tenant and occupant, I am satisfied that the Tenant has suffered a significant loss of use of numerous areas of the rental unit since December 2019, as a result of the Landlords' failure to comply with section 32 (1) of the *Act*, including the loss of use of one bedroom and all storage areas, as well as the Landlords' failure to comply with orders set out by an Arbitrator with the Branch in a decision dated May 6, 2020. I also find that the Tenant has suffered a significant loss of quiet enjoyment of the rental unit as a result of the Landlords' failure to comply with both section 32 (1) of the *Act* and the previous decision and orders from the Branch, as the occupant of the affected bedroom has had to sleep in the living room since December 2019. As a result, I award the Tenant the \$1,100.00 per month rent reduction sought for loss of use and loss of quiet enjoyment, beginning December 2019, and continuing until all mould remediation and repair work is completed.

While the Tenant also sought an order restricting or setting conditions on the Landlords' right to enter the rental unit, I find only some of the conditions and restrictions sought by the Tenant to be reasonable. I grant the Tenant's request that PPE be used by the Landlords and any contractors/workers when entering the rental unit until the threat for the current pandemic has passed, and I order that the PPE to be worn include a mask, gloves, and shoe covers. Although the Tenant sought 48 hours written notice of any entry to the rental unit, I find no reasonable reason at this current time to order the

Landlords to comply with notice of entry requirements other than those set out under section 29 of the *Act*. As a result, I order that the Landlords comply with section 29 of the *Act* with respect to entry to the rental unit. Should the Landlords fail to comply with these requirements, the Tenant may submit a subsequent Application for Dispute Resolution seeking restrictions or conditions on the Landlords' right to entry or monetary compensation for breach of the *Act*.

The Tenant also sought an order barring parties who they stated have been violent or abusive to them and the occupant in the past, from entering the rental unit, including the Landlords or their contractors/workers. However, neither the Tenant nor the occupant provided compelling evidence to satisfy me that either the Landlords or any contractors/workers permitted entry to the rental unit have been violent or abusive to the Tenant or occupant in the past. I therefore dismiss this portion of the Tenant's claim and remind the Tenant and occupant that there is no requirement for them to be present during entries to the rental unit by the Landlords or their contractors/workers. If further issues arise necessitating the need for restrictions, the Tenant may file an Application for Dispute Resolution at that time.

As the Tenant was successful in most of their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72 (1) of the *Act*. Based on the above and pursuant to section 67 of the *Act*, I find that the Tenant is entitled to monetary compensation from the Landlords in the amount of \$8,900.00 for retroactive rent reductions between December 2019 – July 2020, and recovery of the filing fee. The Tenant is entitled to deduct this amount from future rent payable under the tenancy agreement, or to serve and enforce the attached Monetary Order.

Based on the affirmed and uncontested testimony of the Tenant and occupant, I believe that the Landlords may be attempting to avoid the previous repair orders from the Branch as well as their obligations under the *Act*, by seeking to end the tenancy by way of a Two Month Notice. The Landlords are therefore cautioned that they cannot avoid orders from the Branch or their obligations under the *Act* and regulation and that failure to comply with this decision and orders as well as the previous decision and orders from the Branch or any other sections of the *Act* or regulation, may result in administrative penalties of up to \$5,000.00 per day, pursuant to sections 87.3 and 87.4 of the *Act*.

Conclusion

Pursuant to section 67 of the *Act*, the Tenant is entitled to monetary compensation from the Landlords in the amount of \$8,900.00. The Tenant is entitled to deduct this amount

from future rent payable under the tenancy agreement, or to serve and enforce the attached Monetary Order, or balance thereof, on the Landlords. The attached Monetary Order in the amount of **\$8,900.00** is therefore provided to the Tenant in the above terms and the Landlords must be served with this Order before it is enforceable. Should the Landlords 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 deduct \$1,100.00 per month from rent, commencing August 1, 2020, and ending once all mould remediation and repair work has been completed in the rental unit by the Landlords. Additional rent reductions, calculated at \$10.00 per day each, may also be applicable as outlined in this decision, if the Landlords fail to comply with the orders and timelines set out by me in this decision.

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 28, 2020

Residential Tenancy Branch