



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL
RR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlord and all tenants attended the hearing. One of the tenants identified herself as an Advocate, and is not a tenant. The landlord was accompanied by Legal Counsel. The landlord and a witness for the landlord gave affirmed testimony. One of the 2 tenants also gave affirmed testimony, and the parties were given the opportunity to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages caused to the bathrooms of the rental unit?

- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and more specifically for loss of use of the bathrooms in the rental unit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 7, 2020 and the tenants still reside in the rental unit. Rent in the amount of \$1,550.00 is payable on the 1st day of each month and there are no rental arrears. The landlord did not collect a pro-rated amount for the first month because the rental unit was available commencing April 1, 2020. The landlord collected a security deposit from the tenants in the amount of \$500.00 at the outset of the tenancy, which is still held in trust by the landlord, and no pet damage deposit was collected. The landlord further testified that the tenants paid the security deposit but it was supposed to be half of the rent, or \$775.00 and the tenants were to pay the balance later, but that never happened. The rental unit is a townhouse, and the landlord does not reside on the property.

There is no written tenancy agreement, and no move-in condition inspection report was completed. The landlord showed the tenant and her husband and brother the whole house. It's a strata property and the strata completes inspections during the winter and the summer, and everything was in working order.

Previously, around August last year when the landlord lived in the rental unit, a hole existed in the downstairs bathroom wall, which was repaired with calking as suggested by a painter. The shower and drain were fine, and in working condition, completely new and inspected by a plumber.

During the tenancy the shower was dripping and on May 28 the tenant sent a photograph of a bubble in the wall to the landlord, which was caused by too much pressure on the handle and the pipe burst. The damage originated from the upstairs bathroom, and that bathroom didn't have any damage before. The pipes are between the walls, and there was no point in repairing only one of the bathrooms. The plumber inspected and assessed that both bathrooms should be re-done.

The landlord has provided an Invoice dated July 21, 2020 in the amount of \$8,400.00 which states that the work performed was: "One Full Bathroom demolished and fully rebuild;" and "One half Bathroom fully demolished and fully rebuild." The landlord claims that amount from the tenants in addition to the \$100.00 filing fee.

The landlord's witness (PS) testified that he is the plumber who attended the rental unit. He saw a bubble on the wall in the downstairs bathroom, which he popped, and there was water leakage. The witness went upstairs and the shower control was leaking and a joint in the pipe was leaking as well. The witness took out some drywall and testified that the likely cause was excessive force in the shower system and it twisted from the pressure.

The landlord paid the witness \$8,000.00 plus taxes to complete the repair, which took a couple of days.

The pipes in the wall are the originals from when the house was built, but in his opinion, it would not have been leaking for more than a week. There didn't appear to be any previous damage or repairs done, except in the downstairs bathroom, there was a hole taped with calking and the witness ripped it out.

The tenant testified that in March, 2020, prior to moving into the rental unit, the tenant viewed the rental unit with her husband and brother, and the tenant noticed a hole in the bathroom and asked the landlord to paint, but due to COVID-19 the landlord refused, but said it would be repaired within 2 days and prior to moving in. Due to the family's circumstances, the tenants did not actually move in until April 28, 2020.

On May 28, 2020 the tenant sent a photograph of the bubble in the wall to the landlord. The bubble in the wall is right below where the calking is, so the landlord knew about the problem already at that time. He told the tenant to stop using the bathroom, but it wasn't until June 4 that the landlord attended. He removed everything in both bathrooms except a toilet in the downstairs bathroom. Work started in the bathrooms on June 12 or 14, 2020. The tenants stayed at a relative's home. The tenants were unable to use both washrooms because they were without a sink and tub. The toilet downstairs was removed June 12 and replaced on July 17, and the upstairs bathroom had a toilet but no sink. There was no sink until July 17 and no shower.

The tenant disputes the testimony of the landlord that the security deposit was \$500.00 and the tenants were supposed to pay more later. The landlord told the tenant that it would only be \$500.00 because the landlord said that the tenant looked like a clean person.

Analysis

Firstly, with respect to the landlord's application, in order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord claims \$8,400.00 from the tenant for entirely removing and replacing 2 bathrooms as a result of a leaking shower. I am not satisfied that the landlord has established that repairing the shower or any pipes warranted an entire replacement of both bathrooms, or that doing so was a result of the tenant's failure to comply with the *Act* or the tenancy agreement. Nor am I satisfied that the tenant is responsible for renovating the landlord's home, and I dismiss the landlord's application in its entirety without leave to reapply.

With respect to the tenant's application, there is no doubt that the landlord made the decision to renovate both bathrooms during the tenancy. The tenant also testified that the tenants stayed at the home of a relative for a time, and that both bathrooms were fully or at least partially unusable from May 28, 2020, the date the tenant notified the landlord of a bubble in the wall, until July 17, 2020.

The tenant's claim is one full month of rent, and considering the photographs and other evidentiary material, I am satisfied that the tenancy has been devalued for more than one month as a result of unusable bathrooms. The tenants enjoyed the rest of the home, when not staying at the home of a relative, however, I also find that the damage to the shower occurred prior to this tenancy beginning, and I am satisfied that the landlord was aware of a problem with the plumbing even though everything was "in working condition," as the landlord testified.

A landlord is required to provide and maintain residential premises in a state of decoration and repair that makes it suitable for occupation by a tenant. Being without bathroom facilities for more than a month is contrary to the *Act*, and I find that the tenants have established a claim of \$1,550.00. I hereby grant a monetary order in favour of the tenants in that amount, and I order that the tenants be permitted to reduce rent by that amount for a future month, or may otherwise recover it.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,550.00, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: September 21, 2020

Residential Tenancy Branch