



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nest Property Management and Real Estate
Service and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *RP, RR, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to sections 32, 65 and 72 of the *Residential Tenancy Act* for an order directing the landlord to carry out repairs. The tenant also applied for a monetary order for compensation for delays on the part of the landlord to carry out repairs and 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, to make submissions and to call witnesses. The tenant represented himself. The corporate landlord was represented by their agent.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidence in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the tenant entitled to compensation and the other remedies he has applied for?

Background and Evidence

The background facts are generally undisputed. The tenancy started on July 01, 2019. The rental unit is a three-level home with four bedrooms and four bathrooms. Three of the bathrooms are full bathrooms with shower facilities. The monthly rent is \$2,495.00 due on the first of each month.

The tenant testified that on October 26, 2019, he informed the landlord by email, that the shower door hinges were loose and requested the landlord to carry out repairs. The landlord responded by email on October 28, 2019 asking for additional information. Copies of both emails were filed into evidence.

From this point on the testimony of the parties contradicted each other. The tenant stated that the landlord did not carry out repairs until after the tenant made this application on September 06, 2020. The landlord stated that he made multiple calls to arrange an appointment to assess and carry out repairs, but the tenant wanted to be present and was not available before 5pm. The landlord stated that unless he paid overtime, the repair person was not available after 5pm.

In an email dated October 15, 2019, the tenant requested the manager to request the owner of the property to stop contacting the tenant by text message. The landlord stated that since then, he made contact with the tenant by telephone. The tenant denies having received phone calls from the manager regarding the repairs of the shower door. The next message filed into evidence, regarding the shower door is dated May 26, 2020 and the landlord replied on June 02, 2020, stating that he will send a repair person to check out the problem.

The shower door was fixed on September 18, 2020. The tenant stated that he is not happy with the job and fears that the door is still loose and may cause injury to a family member. The landlord stated that he is in the process of obtaining a quote to replace the door and will have the job done by December 01, 2020.

The landlord stated that the shower door was in perfect working order at the start of tenancy and this damage to the hinges could only have come from someone hanging on the door. The landlord suggested that it is possible that one of the tenant's four children may have caused the door to come loose at the hinges. The landlord believed that the shower door could not have come loose from normal use.

The tenant denied that his children damaged the shower door but agreed that the door was fine for the first four months of tenancy. The tenant stated that it was too dangerous to use the shower because of the loose shower glass door.

The landlord stated that the delay is a result of the tenant not wanting to allow the landlord or the repair person inside the rental unit when he was not home. The landlord also added that a few months went by during the Pandemic, that he did not contact the tenant to arrange an appointment for a repair man to attend the rental unit.

The tenant stated that two burners on the stove are not working. The landlord stated that he was not informed of this until the tenant mentioned it during the hearing. The landlord agreed to have the burners replaced by December 01, 2020.

The tenant stated that the window had a hole in the frame from the handle that was used to wind the window open and shut. The landlord stated that the handle broke and the window must be operated manually. The landlord agreed to have the hole sealed off by December 01, 2020.

The tenant is claiming \$14,970.00 as compensation for the period that he was unable to use the shower due to the loose hinges on the door.

Analysis

Based on the documentary evidence and sworn testimony of both parties, I find that the shower door became loose about four months into the tenancy. The parties agreed that the door was fine at the start of tenancy. I must now determine whether repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the testimony of both parties and the documents filed into evidence, I find as follows:

- The landlord's testimony has merit that the hinges could not have become loose from normal use of opening and closing the door while the shower is in use.
- On a balance of probabilities, it is more likely than not that the hinges on the shower door came loose as a result of the mishandling of the door.
- The rental unit has two more bath facilities and therefore the tenant was not without a bathroom at any time.
- The tenant did not fully cooperate with the landlord when he refused to allow repairs to be carried out prior to 5pm.

Based on the testimony of both parties, I find that it is possible that the shower door hinges came loose from misuse and in that case the tenant is responsible for the cost of repairs. I further find that the tenant would not permit the landlord to visit the unit in the tenant's absence and therefore it was difficult to schedule a technician to visit and carry out repairs.

Since I am unable to determine the true cause of the problem with the hinges, I give the tenant the benefit of the doubt and I order the landlord to have it repaired at his cost by December 01, 2020.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that he was temporarily inconvenienced by the inability to use the shower because of the loose hinges.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

I find that the tenant is not entitled to compensation in the amount of his claim of \$14,970.00 but is entitled to a nominal award for the inconvenience caused by the delay on the part of the landlord in responding to his complaint. I find it appropriate to award the tenant a nominal award of \$50.00.

Since the tenant has not proven his case, he must bear the cost of filing his own application.

The tenant may make a one-time deduction of \$50.00 from a future rent.

Conclusion

I order the landlord to complete the following repairs by December 01, 2020.

1. Repair or replace shower door
2. Repair stove
3. Repair hole in window frame

The tenant may make a one-time deduction of \$50.00 from a future rent.

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: October 26, 2020

Residential Tenancy Branch