



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order for regular repairs, pursuant to section 32; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlords' agent, the tenants and an advocate for the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlords' agent was personally served with the tenants' application for dispute resolution on October 8, 2020. I find that the landlords were served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to an Order for regular repairs, pursuant to section 32 of the *Act*?
2. Are the tenants entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 15, 2020 and is currently ongoing. Monthly rent in the amount of \$2,500.00 is payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenants testified that less than one week into the tenancy the hot water stopped working and they did not have hot water. The tenants testified that the landlord was slow to respond at that it took the landlord 1.5 months to replace the hot water tank from the time they notified the landlord of the problem. The landlord testified that it took approximately one month to fix the problem.

The tenants testified that their toilet stopped flushing and it took the landlords 1.5 months to fix the toilet. The tenants testified that they had to use a different toilet in the subject rental property during that time. The agent testified that the toilet was fixed a couple of days after the landlords were notified of the issue.

I asked both parties to provide me with a timeline of when the water and toilet problems were first brought to the attention of the landlord and when they were fixed. Neither party was able to provide me with exact dates, but reference was made to the text messages entered into evidence. From the text messages entered into evidence it appears that the first time the tenants informed the landlords about the hot water tank not working was July 19, 2020 and that the hot water tank was replaced on August 28, 2020, 40 days later. From the text messages entered into evidence, it appears that the first time the tenants informed the landlord about the toilet was August 19, 2020. It is unclear when the toilet was repaired as text message past August 28, 2020 were not provided. The text messages show that the toilet was not fixed as of August 28, 2020.

The tenants testified that at the start of the tenancy they noticed that one of the lights in the subject rental property started smoking when they used it, so they turned it off and asked the landlords to fix it; however, the landlords did not fix it. A photograph of a light fixture with scorch marks was entered into evidence. The tenants testified that there are

live exposed wires in the garage of the subject rental property and that the landlords were advised of same at the start of the tenancy but have not fixed them. The agent did not dispute the above testimony. The agent testified that the tenants refused to allow the electrician in to repair the light and garage wires. The tenants testified that the landlords never sent in an electrician until after they made this application for dispute resolution but that they did not allow entry because they were not given proper notice. The agent agreed that they attempted to have the wiring repaired after the tenants' filed this application for dispute resolution. No proof of the notice provided by the landlords to the tenant was entered into evidence.

The tenants testified that the landlord also left mouldy drywall in a container on the patio of the subject rental property which is a health hazard. The tenants testified that they have been asking the landlord to remove the moldy drywall from the patio but the landlords have not. The agent agreed that mouldy drywall has been on the patio for the duration of the tenancy. The parties disagreed as to whether or not the drywall came from the subject rental property.

The tenants' application for dispute resolution states that the tenants are seeking a \$2,500.00 rent reduction for repairs. I asked the tenants how the \$2,500.00 rent reduction was arrived at, tenant A.S. testified that she meant to ask for a reduction equivalent to three months rent but made a mistake on the application. The tenants did not provide a breakdown as to how either sum was arrived at.

Analysis

Section 32 of the *Act* states that:

- 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.

I find that live exposed wires, wires that cause smoke and mouldy building materials are unsafe and that the landlords breached section 32(1) of the *Act* by failing to repair the wiring and in failing to remove the mouldy materials at the subject rental property. I therefore Order the landlords to repair the light fixture and exposed wiring in the garage.

I Order the landlords to properly dispose of the mouldy building materials on the tenants' patio.

Based on the testimony of the parties and the text messages entered into evidence, I find that the tenants went without reliable hot water for 40 days. Based on the testimony of both parties I find that the toilet in the subject rental property was not functioning correctly for at least nine days.

Section 65(1)(f) of the *Act* states:

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenants must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the tenants have failed to prove the value of their loss as no testimony was provided as to how the \$2,500.00 claim was arrived at or how the tenants alternative claim of \$7,500.00 was arrived at.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it

has been proven that there has been an infraction of a legal right. I find that while the tenants have not proved the amount the value of the tenancy was reduced, they have proved that they have suffered an infraction of their legal right to live in a safe and functional rental property.

I find that the tenants are entitled to nominal damages in the amount of \$1,000.00.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct \$1,000.00 from rent due to the landlord.

Conclusion

The landlords are ordered to repair the light fixture and exposed garage wiring.

The landlords are ordered to dispose of the mouldy building materials.

The tenants are entitled to deduct \$1,000.00 from rent due to the landlords.

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: December 16, 2020

Residential Tenancy Branch