



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

RP, RR

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant RE confirmed that they gave Tenant KD (the tenant) full authority to act on their behalf.

Landlord KO (the landlord), the landlord's rental property manager confirmed that the landlord received a copy of the tenants' dispute resolution hearing package, and written and photographic evidence sent by the tenants by registered mail on January 20, 2021. On this basis and in accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with these materials by the tenants. Since the tenant also confirmed that they had received copies of the landlord's written evidence, I find that the tenants were duly served with the landlord's written evidence in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the landlords required to undertake repairs to this rental unit? Are the tenants entitled to an order enabling them to reduce rent for the loss in value of their tenancy on the basis of the landlord's failure to provide them with facilities that they could reasonably have expected to have received as part of their Residential Tenancy

Agreement (the Agreement) with the landlord? Should any other orders be issued with respect to this tenancy?

Background and Evidence

On June 2 and 14, 2017, the parties signed a fixed term Agreement for a rental suite in a high rise rental building that was to run from June 15, 2017 until June 30, 2018. When this initial term expired, the tenancy continued on a month-to-month basis. Monthly rent was initially set at \$1,250.00, payable on the first of each month, plus hydro. Since then, the monthly rent increased to \$1,300.00 on July 1, 2018, and to \$1,333.00 on March 1, 2020. The landlord continues to hold a \$625.00 security deposit and a \$625.00 pet damage deposit paid on June 2, 2017.

The tenants applied for an order requiring the landlord to undertake the replacement of the windows in their living room and in a bedroom. They also requested proper repair of the walls below and adjacent to both of these windows. In the documents they submitted, they also noted that repairs that the landlord had committed to undertake to either replace or refinish the bathtub in this rental unit are still outstanding. Their application for a retroactive rent reduction of \$6,800.00 was arrived at by asking for a 15% rent reduction for each month between April 2018 until January 2021.

The tenants provided undisputed written evidence that they have been asking the landlord's representatives for the replacement of the windows in this rental unit since water damage below these windows first arose in February 2018, the first winter when they were living there. The tenant testified that the landlord's contractor inspected the rental unit, opened a section of drywall below the window, and concluded that there were likely cracks in the foundation and that a full replacement of the windows would be required as would be repairs to the structure of the building. Although the tenant confirmed that the landlord was willing to install new drywall to cover over the deteriorating drywall below the windows, the tenants were unwilling to agree to this work as they were concerned that this was not an adequate remedy for the health and safety concerns related to the damage that would continue to occur as a result of the damaged windows and foundation. The tenant said that they did not want the landlord to spend ill-advised money on what was essentially a stop gap measure that would not resolve the overall problem identified by the landlord's own contractor.

The tenant said that over time the condition of the windows and the walls below the windows have continued to deteriorate. They gave undisputed testimony that they have been in contact with the landlord's representatives periodically to obtain an update on

the landlord's plans to undertake the major repair work required to replace windows throughout much of the building and to remedy any structural problems to the foundation that may have arisen as a result of the leaky windows. The tenant disagreed with the landlord's assertion that the problems with the tenants' windows could only be addressed through an overall plan to replace all of the building's windows. The tenant noted that windows in some of the building had been replaced in the past.

In their December 12, 2020 letter to the landlord entered into written evidence by the tenants, the tenants cited sections 28(b) and 32(1) of the *Act* as grounds for requiring the replacement of their windows

...Windows that leak, do not properly function, and have sills that leak water damaging the walls are a safety hazard, cause significant stress, reduce the reasonable enjoyment of our suite, and jeopardize the peace of mind of our tenancy. Therefore, they must be replaced as per the Tenancy Act stating

Section 28 "A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:"

Subsection(b) "freedom from unreasonable disturbance;"

Section 32 (1) "A landlord must provide and maintain residential property in a state of decoration and repair that"

Subsection (a) "complies with the health, safety and housing standards required by law, and"

Subsection (b) "having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."...

The landlord testified that the windows in this building are likely the original ones installed when this building was constructed about 40 – 45 years ago. On this point, the tenant stated that they understood that the building was even older than the estimate claimed by the landlord, but agreed that the windows were likely the original ones installed in the building. Since the problems associated with the windows in this rental unit are not an isolated occurrence within this building, the landlord has been working with the building owner to arrive at a major capital investment that will likely exceed two million dollars. The landlord said that quotations have been obtained and the owner of the building is studying how best to proceed with this major capital outlay. The landlord said that the time frame for implementing these plans were "in the hands of the owner" of this building.

The landlord and Landlord Representative CV (the caretaker of this building) asserted that the tenants have refused the landlord's ongoing offer to repair the drywall below the

windows, first made shortly after the landlord's contractor first inspected the rental unit in early 2018. The landlord gave undisputed sworn testimony that others in this building have agreed to let the landlord repair damaged drywall below windows, and that there have been no complaints from these tenants following these repairs. On this point, the landlord freely admitted that such repairs would only "cover up" the underlying problems, but that new drywall would at least alter the existing appearance of the drywall which they said was "ugly to look at." My review of the photographic evidence confirms the landlord's observation regarding the condition of the drywall in these rooms.

The landlord said that the only windows replaced in the building occurred when a previous landlord representative agreed to replace one set of windows on the 8th floor of this building as a means of determining the actual cost of replacing one set of windows in a rental suite. The replacement of the windows in this one suite enabled the landlord to confirm that the cost of replacing windows in this building on a piecemeal basis would far exceed the cost of undertaking the necessary but expensive replacement of windows and repair of the damage that had arisen for the entire building.

The landlord gave undisputed sworn testimony that the bathtub was newly installed in 2016, shortly before this tenancy began. Although they did not deny that the glazing on the bathtub needed repair work or that the bathtub needed to be replaced, they observed that it was most unusual for a bathtub of this age to have been damaged to the extent it has in such a short time period. Landlord Representative CV maintained that the tenants must be doing something unusual to damage what was a relatively new bathtub so quickly after its initial installation. The tenant denied that they have been doing anything unusual that would have led to the deterioration of the bathtub so quickly.

The parties agreed that the landlord has offered two alternatives whereby the bathtub could be either repaired or replaced. If the bathtub were reglazed, the landlord maintained that the fumes from this process would likely render the bathroom, and likely the entire rental unit, uninhabitable for one to two days. If the bathtub required replacement, they estimated that this process would render the bathroom unusable for four or five days. The landlord said that they have been waiting for the tenants to make up their minds as which of these options they preferred. The tenant said that it is the landlord's property. They said that preferred to leave the decision as to which of these processes the landlord would be commencing to the landlord. The tenant gave undisputed sworn testimony that both tenants are students and that they do not have alternative accommodations where they could reside while the bathtub work is being

undertaken. Given my observation that the *Act* would attach responsibility for underwriting the cost of the tenants' temporary relocation elsewhere, likely to a nearby hotel, while the repair work is completed, the landlord said that they chose to reglaze the bathroom tub. This would require the tenants to be absent from the rental unit for two days to enable the fumes from this process to dissipate.

Analysis

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord has contravened the *Act* or their Agreement and that the tenants have experienced a loss in the value of their tenancy as a result of this contravention.

Although section 28(b) of the *Act* cited by the tenants' in their December 12, 2020 letter confirms that tenants are entitled to quiet enjoyment of their premises free of unreasonable disturbance, I find that they have failed to demonstrate to the extent required that the landlord's actions or omissions constitute unreasonable disturbance and an infringement on their quiet enjoyment of these rental premises.

Of more relevant concern is their associated claim that the landlord has failed to comply with the requirements of section 32 of the *Act*, which read in part as follows:

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 also note that section 32(5) of the *Act* does not absolve a landlord from an obligation under paragraph 32(1)(a) of the *Act* “whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.”

I find that there is undisputed evidence that the bathtub in the tenants’ bathroom requires repair, and that these repairs can best be accomplished by reglazing that bathtub. As this process will require the tenants to be absent from the rental unit for at least two days, I order the parties to make arrangements whereby the reglazing of the bathtub will occur at a time convenient and suitable for the tenants, given their academic schedules.

I further order the landlord to reimburse the tenants for their hotel expenses, any internet connection charges they incur while staying at a nearby hotel, and a reasonable daily meal allowance during the period when the tenants need to be absent from the rental unit while the work to reglaze their bathtub occurs and until it is safe for them to return to the rental unit. To assist with this process, I order the landlords to consult with the tenants to ensure that suitable arrangements are conducted to comply with the above orders.

In the event that the landlord has not made arrangements to complete the repairs to the tenant’s bathtub by May 1, 2021, I order the tenants to reduce their monthly rent by \$100.00 until the month after these repairs are completed.

I also find that the tenants have given undisputed sworn testimony that the water damage below and beside their windows and the condition of the windows has deteriorated over time, first becoming noticeable in February 2018, after their tenancy began.

Based on a balance of probabilities, I find that the tenants have provided sufficient written and photographic evidence, supported by sworn testimony that the landlord has failed to maintain their rental premises in a state of decoration and repair that makes it suitable for occupation by the tenants. The landlord’s representatives did not deny the tenants’ claim and the compelling photographic evidence that the drywall and window sills have been significantly damaged and require repair. I find that there is ample evidence to warrant an order requiring the repair or replacement of the damaged drywall and window sills in this rental unit.

In considering the tenants’ application to include an order to replace the windows with the order to replace the damaged drywall and either repair or replace the damaged

window sills, I find some merit to the landlord's assertion that the replacement of the windows and repair of the underlying structural walls for this building is a project that cannot be meaningfully undertaken on a piecemeal basis. To expend funds to repair two windows in the rental unit may very well only magnify the problem on rental units below the tenants and could lead to a waste of resources on a repair project that the landlord understands will be expensive. However, by the landlord's admission, repairing the damaged window sills and drywall below the windows without replacing the leaking windows above them will only lead to more damage at a later date.

While I understand that the tenants are seeking the comprehensive repair of the windows, window sills and drywall at the same time, I find that they have only demonstrated to the extent required that the immediate repairs they are seeking should be directed at the repair or replacement of the window sills and the replacement of the drywall below and beside these windows. Although they have asserted that failing to replace the windows places them in an unsafe situation with respect to leakage that could extend to the electrical outlets and baseboard heaters below these windows, they have provided little evidence to support this assertion. By contrast, the landlord has provided undisputed sworn testimony that the measures taken to undertake these temporary repairs below windows in other suites in this building have not led to any complaints or problems that would jeopardize the safety of residents in those suites or in the building. While it is not ideal for such temporary repairs to be undertaken without a commitment to remedy the source of the problems, the windows above the damaged drywall, it does seem apparent that the landlord and owner of the building are now taking active measures to address the underlying problems that will require major repairs to this building.

For these reasons, I order the landlord to remove and replace all drywall damaged by window leakage in the tenants' bedroom and living room, and to repair or replace the damaged window sills in these rooms. As it would likely make sense to undertake as much of this work as possible while the tenants are out of the premises awaiting the repair of their bathtub, I would encourage the landlord to make arrangements for the repair of the damaged drywall and repair/replacement of damaged window sills so as to coincide with the repair work on the tenants' bathtub to the extent possible.

In the event that the landlord has not made arrangements to complete the replacement of the damaged drywall and the replacement or repair of the window sills in the tenants' bedroom and living room by May 1, 2021, I order the tenants to reduce their monthly rent by \$100.00 until the month after these repairs are completed.

Although I am not ordering the landlord to replace the tenants' damaged living room and bedroom windows at the same time as I am ordering the replacement of the work to be performed on the damaged drywall and window sills in these rooms, I do find that the windows need to be replaced. For this reason, I order the landlord to replace the damaged windows in the living room and bedroom by August 1, 2021, a time frame designed to enable the landlord to co-ordinate the replacement of these windows with the more general work that the landlord is planning to finalize with respect to this building.

In the event that this work to replace the tenants' windows is not completed by August 1, 2021, I order the tenants to reduce their monthly rent by \$200.00. Should the work not be completed by September 1, 2021, I order the tenants to reduce their monthly rent by an additional \$200.00, resulting in a \$400.00 rent reduction for that month. I order that this process of increasing the allowed reduction in monthly rent by an additional \$200.00 for each successive month is to continue until the work is completed or until the tenants will be allowed to occupy the rental unit without paying any monthly rent. Monthly rent is to be restored to the legal amount the landlords would otherwise be allowed to charge for this tenancy during the month after the tenants' windows are replaced.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Although I have given the tenants' application for a monetary award for the reduction in the value of their tenancy careful consideration, I find that there is evidence that the tenants refused the landlord's offer to repair their damaged drywall and window sills. I find that their decision to refuse the landlord's offer to conduct these repairs in the spring of 2018, and on subsequent occasions, and instead seek the replacement of the windows at the same time as the repair of the drywall and window sills, though no doubt well-intentioned, disqualifies them from claiming for a loss in the value of their tenancy over those years.

I dismiss the tenants' application for a retroactive rent reduction as I find on a balance of probabilities that they have not met the onus of demonstrating their entitlement to a loss in the value of their tenancy as established by sections 65 and 67 of the *Act*. As was noted earlier, I also dismiss their assertion that the landlord's actions or omissions have led to a loss in their quiet enjoyment of these premises for which they should be compensated.

Conclusion

I dismiss the tenants' application for a retroactive rent reduction without leave to reapply.

I issue the following orders in accordance with sections 32 and 65 of the *Act*:

1. I order the parties to make arrangements whereby the reglazing of the bathtub will occur at a time convenient and suitable for the tenants, given their academic schedules. I further order the landlord to reimburse the tenants for their hotel expenses, any internet connection charges they incur while staying at a nearby hotel, and a reasonable daily meal allowance during the period when the tenants need to be absent from the rental unit while the work to reglaze their bathtub occurs and until it is safe for them to return to the rental unit.
2. In the event that the landlord has not made arrangements to complete the repairs to the tenant's bathtub by May 1, 2021, I order the tenants to reduce their monthly rent by \$100.00 until the month after these repairs are completed.
3. I order the landlord to remove and replace all drywall damaged by window leakage in the tenants' bedroom and living room, and to repair or replace the damaged window sills in these rooms.
4. In the event that the landlord has not made arrangements to complete the replacement of the damaged drywall and the replacement or repair of the window sills in the tenants' bedroom and living room by May 1, 2021, I order the tenants to reduce their monthly rent by \$100.00 until the month after these repairs are completed.
5. I order the landlord to replace the damaged windows in the living room and bedroom by August 1, 2021.
6. In the event that the work to replace the tenants' windows is not completed by August 1, 2021, I order the tenants to reduce their monthly rent by \$200.00. Should this work not be completed by September 1, 2021, I order the tenants to reduce their monthly rent by an additional \$200.00, resulting in a \$400.00 rent reduction for that month. I order that this process of increasing the allowed reduction in monthly rent by an additional \$200.00 for each successive month is

to continue until the month after the work is completed or until the tenants will be allowed to occupy the rental unit without paying any monthly rent. Monthly rent is to be restored to the legal amount the landlords would otherwise charge for this tenancy during the month after the tenants' windows are replaced.

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: March 08, 2021

Residential Tenancy Branch