



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, FFT

Introduction

On December 23, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the “*Act*”), seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing; however, neither Landlord attended the hearing at any point during the 58-minute teleconference call. All in attendance provided a solemn affirmation.

The Tenants advised that the Landlords were each served a Notice of Hearing and evidence package by registered mail on January 2, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories indicated that these packages were delivered on January 5, 2021. They stated that they served these packages to the address for the owners that they discovered through a Land Title Search. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were duly served the Tenants’ Notice of Hearing and evidence packages.

The Tenants advised that they filed a previous Application for Dispute Resolution against the Landlords (the relevant file number is noted on the first page of this Decision). It was determined in that previous Decision that the Landlord, as noted on the tenancy agreement, was a numbered company that was owned by the named Respondents on this Application. As such, I am satisfied that the named Respondents on this Application are the Landlords of the rental unit.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to a repair Order?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the tenancy started on August 15, 2016, that rent was currently established at \$1,600.00 per month, and that it was due on the first day of each month. A security deposit of \$1,600.00 was originally paid, but half of that was returned by the Landlords as the Landlords were not permitted to collect more than half the amount of rent for a security deposit pursuant to the *Act*. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

They advised that there has been a leak in the skylights of the rental unit since June 2020, which has allowed water to seep in and run down the walls. This has caused the drywall to become wet, swell, and separate from the walls. They advised the property manager of these issues and a roofing contractor attended to investigate. It was reported that the skylights were cracked and needed replacement. As the Landlords did not take any other actions to address the leak issue, the Tenants paid \$275.00 to have a roofing company assess the problem. It was determined that it would cost approximately \$2,500.00 to repair each skylight. This assessment was forwarded to the property manager on July 23, 2020; however, this person discussed the repair with the Landlords, and they were not willing to address the issue.

On September 11, 2020, the Tenants made an Application for Dispute Resolution seeking an emergency repair pursuant to Section 62 of the *Act*. A Decision was rendered on October 29, 2020 where the Arbitrator made the following determination:

In this case, I find the tenants submitted sufficient evidence that they have made repeated written requests to the landlords through their property manager and no measures have been taken to make those repairs.

I also find that the tenants provided sufficient evidence that the repairs and remediation must be made in order to preserve the property and prevent further mold from developing, for health and safety reasons.

Pursuant to section 62(3) of the *Act*, I therefore order the landlords to immediately hire a licensed, professional roofer, to make the repairs necessary **in a good and workmanlike manner and which meets health and safety standards** to address the matter of the leaks in the two skylights as recommended by the licensed, professional roofer, **no later than November 15, 2020.**

I further order the landlord to obtain a written report from the roofer when the process has been completed and provide that written copy to the tenants.

Once the repairs are made, I further order the landlords to **immediately remediate the mould throughout the rental unit, immediately repair any damaged drywall in the affected area, all with proof to the tenants that the remediation complies with health and safety standards, by November 30, 2020;**

If the landlords fail to comply with the orders, the tenants are at liberty to file another application for dispute resolution and seek an order reducing their monthly rent until such repairs, replacement or remediation, in their entirety, have been completed.

As the tenants are successful with their application, I grant them recovery of their filing fee of \$100. I direct the tenants to deduct \$100 from their next, or a future monthly rent payment, in satisfaction of this monetary award.

Despite this Decision and Orders, the Tenants advised that the Landlords have not complied with this Decision as no repairs have commenced to date. They are seeking a repair Order for permission to have the repairs completed themselves, and they are seeking compensation in the amount of **\$5,000.00**, which represents the cost of the repair.

With respect to the loss they have endured because of this issue, they advised that they have had difficulty sleeping, that they are concerned for the safety of their home due to the resultant development of mould, and that this has been an ongoing issue that has been in need of repairs for close to ten months now without any action from the Landlords. They stated that they purchased an air purifier for \$375.00 to address concerns about air quality and they purchased tarps to cover the areas of visible water leaks so that they do not have to deal with the anxiety of seeing this occur. They estimated the loss that they have suffered because of this issue at approximately \$200.00 to \$300.00 per month.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* states that the Landlords must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

Based on the undisputed evidence before me, I am satisfied that a Decision has already been rendered on October 29, 2020 with respect to this repair issue. The Landlords were determined to be negligent and were already clearly Ordered to “immediately hire a licensed, professional roofer, to make the repairs necessary **in a good and workmanlike manner and which meets health and safety standards** to address the matter of the leaks in the two skylights as recommended by the licensed, professional roofer, **no later than November 15, 2020.**” The Landlords were also **Ordered** “to obtain a written report from the roofer when the process has been completed and provide that

written copy to the tenants”, and that “Once the repairs are made, I further order the landlords to **immediately remediate the mould throughout the rental unit, immediately repair any damaged drywall in the affected area, all with proof to the tenants that the remediation complies with health and safety standards, by November 30, 2020.**”

The consistent and undisputed evidence is that despite these Orders, the Landlords have neglected to comply and have not taken any steps to effect the necessary and Ordered repairs, to date. As it is the Landlords’ responsibility under the *Act* to repair and maintain the rental unit, given that the Landlords have already been Ordered to make these necessary repairs, and as the nature of these repairs may be complex and may consequently affect the Landlords’ property, I cannot grant the Tenants another Order to engage in the repairs and have them completed with hired contractors. As such, I dismiss their request for a repair Order.

However, as the Landlords are deliberately and blatantly flouting the required repairs that they have been Ordered to complete by November 30, 2020, I am satisfied that the Tenants are entitled to a rent reduction due to the Landlords’ continued breach of the *Act* and these Orders.

With respect to the Tenants’ claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.” In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlords fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

In considering the amount of compensation awarded to the Tenants, based on the previous Decision, it is clear that the Tenants have done everything in their power to inform the Landlords of the issue and have given them ample opportunity to correct it. I accept the undisputed evidence that this skylight issue has been a problem since June 2020, that the Tenants paid for a roofing assessment which they were not required to

do, that they have been forced to purchase an air purifier as a result of the Landlords' inaction, that they believed it necessary to purchase tarps to cope with this ongoing issue, that they have suffered from a loss of use of the rental unit, and that they have been paying full rent since June 2020 without any compensation for having to live through this situation.

Based on the totality of the evidence before me, I am satisfied that the Landlords' intentional and egregious lack of action does not comply with the *Act* or the previous Decision, and as a consequence, the Tenants have established a monetary award in the amount of **\$690.00** for the cost of the roofing assessment, the air purifier, and the tarps that they would not have had to pay for had the Landlords fulfilled their obligations under the *Act* and corrected this issue in a timely manner.

Furthermore, with respect to the loss that they have suffered for having to live under these conditions from June 2020 to the date of the hearing, Section 65(1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement. I find that the failure of the Landlords to comply with the Tenants' repair request and the subsequent Ordered repairs has resulted in a loss of value of the tenancy, and that the Tenants are entitled to a monetary award.

The Tenants suggested a rent reduction of \$200.00 to \$250.00 to start as appropriate. Given that the Tenants continue to reside in the rental unit, that the nature of the deficiencies are such that they are constantly aware of the need for repairs, and that they must alter their daily routines, even though the inconvenience is surmountable, I am satisfied that the longer that this continues, the more significant the loss becomes. As such, I find that an appropriate amount for the loss in value of this tenancy resulting from the Landlords' failure to address the repairs from June 2020 until the October 29, 2020 Decision is \$250.00 per month. In accordance with Section 65(1)(f) of the *Act*, I issue a retroactive monetary award in the Tenants' favour in the amount of **\$1,250.00** (June 1, 2020 to October 31, 2020), to compensate the Tenants for the loss in value of their tenancy stemming from the Landlords' failure to address the necessary repairs.

Moreover, as the Tenants continued to suffer a loss due to the unlawful actions of the Landlords not complying with the October 29, 2020 Orders, I issue a retroactive monetary award in the Tenants' favour in the amount of **\$2,100.00**, which is equivalent to 6 months (November 1, 2020 to April 30, 2021) @ \$350.00 per month, to compensate the Tenants for the loss in value of their tenancy stemming from the Landlords' failure to comply with the previous Orders. April 2021 has been included in

this award given the current date and the unlikelihood that repairs would be completed prior to April 2021.

If the Landlords fail to complete all of the listed repairs Ordered by the previous Arbitrator in an expedient manner, and do not complete what has been Ordered of them before May 1, 2021, I Order that the monthly rent for this tenancy for May 2021 be reduced by **\$450.00**. Furthermore, on each successive month where repairs have not been completed, the Tenants are authorized to reduce the monthly rent by a **further \$100.00 until such time as the repairs are completed, in their entirety, pursuant to the previous Decision.**

In addition, I Order that the Tenants' rent will return to the normal, monthly amount required by the tenancy agreement and the *Act* on the month following the completion of these repairs.

As the Tenants were successful in these claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a monetary award as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

| | |
|---------------------------------------|-------------------|
| Roofing assessment | \$275.00 |
| Air purifier | \$375.00 |
| Tarps | \$40.00 |
| Loss from June 2020 to October 2020 | \$1,250.00 |
| Loss from November 2020 to April 2021 | \$2,100.00 |
| Recovery of filing fee | \$100.00 |
| TOTAL MONETARY AWARD | \$4,140.00 |

Conclusion

The Tenants are provided with a monetary award in the amount of **\$4,140.00** in satisfaction of these claims. Accordingly, the Tenants may deduct this amount from future rents until fully exhausted.

In the event that the Landlords do not complete all of the listed repairs Ordered by the previous Arbitrator before May 1, 2021, I **Order** that the monthly rent for this tenancy for May 2021 be reduced by \$450.00. On each successive month where repairs have not been completed, the Tenants are authorized to reduce the monthly rent by a further \$100.00 until such time as the repairs are completed pursuant to the previous Decision.

In addition, I **Order** that the Tenants' rent will return to the normal, monthly amount required by the tenancy agreement and the *Act* on the month following the completion of these repairs.

The Tenants are also instructed to inform the Landlords of these deductions to prevent the Landlords from serving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for deficient rent.

Should a dispute arise as to the extent to which the repairs Ordered by the previous Arbitrator have been completed sufficiently, I **Order** that the rent remain at the previous month's reduced rent until such time as the Landlords have applied for and obtained an Order to modify the reduced rent from an Arbitrator appointed under the *Act*. The Landlords are at liberty to apply for a determination as to the Landlords' compliance with the previous Arbitrator's Decision once the Landlords have undertaken the repairs Ordered by the previous Arbitrator.

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 19, 2021

Residential Tenancy Branch