



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Valley Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDCT, RP, OLC, FFT

Introduction

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for these applications from the landlord, pursuant to section 72 of the *Act*.

JL appeared as agent for the landlord in this hearing. Both parties were represented by their respective counsel in this 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.

Issues

Are the tenants entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Are the tenants entitled an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are the tenants entitled to a monetary compensation for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fees from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of these applications and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on December 1, 2018, and reverted to a month-to-month tenancy after November 30, 2019. The monthly rent is currently set at \$1,500.00, payable on the first of the month. The landlord collected a security and pet damage deposit in the amounts of \$750.00 each deposit, which they still hold.

The tenants filed an application to “dispute a rent increase”, which pertains to the landlord’s demand for the tenants to pay the water bill. Both parties acknowledge that the tenancy agreement addendum contains a condition that the tenants are responsible for paying the water bill as stated below:

“The tenants agree to pay the water/sewer bill issued by the City of Abbotsford which the owner of the property of Valley Realty will provide to the tenant as billed”

The landlord’s agent testified that the landlords had paid this water bill from the beginning of the tenancy until June 2020 out of kindness, but decided to start requesting that the tenants pay the water bill as the usage and resulting bills increased. The landlord submits that the tenants were not asked to reimburse the landlord for the previous bills paid, and that the tenants were only charged for the bills supplied as allowed under the tenancy agreement.

The tenants stated in their application that they did not receive any bills or requests from the landlord until they received an email on January 11, 2021, and that they were unaware of having to pay these bills.

The tenants also filed a monetary claim for reimbursement of losses in the amount of \$417.87 for grocery items that were lost due an incident involving their refrigerator and freezer. The tenants testified that on Friday, August 14, 2020 their freezer had stopped working, followed by their refrigerator. The tenants testified that they had attempted to contact the landlord by calling the front desk multiple times, as well as multiple calls to the emergency number. The tenants testified that the dispatcher informed them someone would return their phone call, but no action was taken until the landlord's agent contacted them on Monday, August 17, 2020. The tenants sent an email to the landlord's agent on August 16, 2020 at 5:46 p.m., which the agent responded to on Monday, August 17, 2020 at 11:04 a.m. The landlord immediately dispatched an appliance repairperson, who determined the entire appliance needed to be replaced. The landlord purchased the replacement refrigerator immediately, which was delivered on Thursday, August 20, 2020. The tenants testified that there was a further delay as the replacement refrigerator needed time to cool to the proper temperature in order to be used. The tenants sent the landlord an invoice for the items that they had lost, including some new groceries that they had purchased on August 16, 2020. The tenants submitted a receipt in their evidentiary materials, as well as the itemized invoice that they had sent the landlord. The tenants testified that due to MB's dietary needs, MB required unprocessed foods that required refrigeration, and the tenants suffered a significant loss.

The landlord's agent testified that the landlord had never received any phone calls, and the first notification they had received was the tenants' email. The landlord testified that after receiving the email they had acted in a very timely manner to resolve the situation.

The tenants testified that the landlord was also avoiding several repairs that have been ignored. The tenants submitted photos of the current state of their home, stating that the landlord has failed to address issues that the landlord has deemed cosmetic, including peeling paint, missing ceiling tiles, and holes. The tenants listed the following issues in their claim for outstanding repairs;

- 1) Duct Cleaning. The tenants testified that the ducts have not been cleaned prior to, or during the tenancy.
- 2) Outstanding repairs and mould issue following upstairs sink leak. The tenants testified that although the leak was repaired, the ceiling remains damaged, and has a mould issue. The tenants submitted photos of the ceiling.
- 3) Damage caused by squirrel. The tenants testified that a squirrel caused significant damage, including damage to at least one electric plug. The tenants are concerned that a new squirrel has moved in, and has not been dealt with.

- 4) Repairs to air conditioning unit, which the tenants testified that they had use of since the beginning of the tenancy.

The landlord's agent responded that the landlord has been diligent about addressing all outstanding repairs. The landlord's agent testified that the home was rented in an "as is" condition, and anything outstanding is cosmetic or not included. The landlord's agent testified that they were unaware that there was air conditioning as this was not an included facility in the tenancy agreement, and accordingly, this was not the landlord's obligation to repair. The landlord's agent testified that the repairs to the sink leak were completed, and only cosmetic repairs needed to be done, which is not included. The landlord's agent also testified they had a contract with a pest control company, who is called when the tenants inform the landlord of any pest control issues.

Lastly, the landlord's agent testified that the tenants have refused access to their handyman after a previous dispute. The tenants acknowledge that there was a dispute after the handyman was dispatched to repair an issue, but was not qualified to do so. The tenants testified that they were concerned about their safety after the error, and the handyman had yelled at MB, who had a medical issue.

Analysis

The tenants requested a determination about the water bill, which both parties confirmed was a utility that was to be paid by the tenants per the tenancy agreement, but was not billed to the tenants until much later into the tenancy.

I have considered the evidence and testimony before me, and I find that the tenancy agreement is clear in that the tenants are responsible for these payments. I find that the landlord's decision to not request these payments until much later into the tenancy does not extinguish their rights to request future payments as long as these bills were incurred during the tenancy, and as long as these bills are presented to the tenants. I find that the landlord's decision to not pursue from the tenants the earlier bill payments to be a decision that actually benefitted the tenants. Although the tenants stated in their application that they were unaware of their obligations to pay these bills, I find that the tenancy agreement clearly states that they are responsible for this utility. Although I sympathize how the delay had caused the tenants much confusion, I find that the landlord is not requesting retro-active payments before July 2020, which I find to be reasonable and fair. On this basis, I find that the tenants are responsible for the water bills for this tenancy, including and starting with the two bills referenced in this application for July to August 2020, and September to October 2020.

The tenants are also seeking a monetary order for reimbursement for losses associated with the refrigerator.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 32 of the *Act* reads 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...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...

In assessing this claim, I note that although the refrigerator repair does fall under the landlord's obligations under section 32 of the *Act*, this type of repair does not fall within the category of emergency repairs as defined in the following portion of section 33 of the *Act*:

33 (1) *In this section, "**emergency repairs**" means repairs that are*

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, ...

The landlord's testimony is that they had never received any phone calls or messages prior to the email that was received by the landlord's agent. Although I am very sympathetic to the tenants' situation, including the immense stress and monetary loss associated with the loss of the refrigerator, I do not find that the landlord has contravened the *Act*. Based on the evidence before me, I find that the landlord acted in a very timely manner to immediately dispatch a repair person, and replace the refrigerator once that it was determined that a new refrigerator needed to be purchased.

Although I acknowledge that the tenants made several phone calls prior to this email, I find that there is insufficient evidence to support that the landlord had received these phone calls. On this basis, I find that the tenants have not met the burden of proof to establish that the loss claimed was directly and solely due to the landlord's failure to fulfill their obligations under the *Act* and tenancy agreement. On this basis, I dismiss the tenants' monetary claim for losses without leave to reapply.

I will not consider the remainder of the tenants' applications for outstanding repairs. The tenants are requesting that the landlord clean the ducts, which has not been performed prior to, or during the tenancy. Residential Tenancy Policy Guideline #1 states the following about duct cleaning:

The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

I accept the testimony of the tenants that the landlord has not performed duct cleaning during this tenancy, despite the fact that the tenants have resided in the home since December 2018. Accordingly, I order the landlord to retain the services of a licensed duct cleaning company to clean and make repairs to the ducts as necessary on or before May 16, 2021.

The landlord's agent confirmed in the hearing that the landlord had a contract with a pest control company. I am satisfied that the tenants continue to have a problem with pests in their home, including a possible squirrel or rodent. I order that the landlord contact the pest control company to deal with the issue on or before May 16, 2021, and on an ongoing basis as long as the tenants continue to have this issue.

The tenants also requested repairs to the ceiling stating that mould had started to form after the leak. Although the landlord's agent noted that the home was rented in an "as is" condition, the landlord must still fulfill their obligations to repair and maintain the home to meet health and safety standards under the *Act*. I am satisfied that the photos submitted show repairs that appear to be more than cosmetic, and requires further investigation, and possible remediation and repairs.

Given the testimony and evidence before me, I order the landlord to retain the services of licensed company to inspect and, as required, repair the rental unit to an adequate level of occupancy as set out in sections 32 and 33 of the *Act*. I order that the landlord complete this on or before May 16, 2021.

I order the landlord to retain the services of a licensed remediation company to inspect and perform remediation as required in this rental unit to ensure that the rental unit meets health and safety standards.

I order that the landlord obtain a written report of the above-noted inspection by licensed tradespeople and provide a copy of this report to the tenants within one week of the landlord having received this report.

I order the landlord to undertake this inspection and undertake necessary repairs performed by licensed tradespeople as soon as possible.

In the event that no repairs or remediation is required, I order that the landlord obtain a report from a licensed remediation company confirming this, and provide this to the tenants within one week of obtaining a copy of this report.

The tenants also requested repairs to air conditioning unit. I find that the tenants had use of this facility since the beginning of the tenancy, despite it not being clearly noted as an included facility in the tenancy agreement.

In consideration of the evidence before me, although the tenants enjoyed the use of the air conditioning during this tenancy, I am not satisfied that this facility is included in the monthly rent, not do I find it essential to the tenants' use of the home. Accordingly, I dismiss the tenants' application for repairs to the air conditioning in the home without leave to reapply.

I order that the landlord comply with the above orders. I note that despite the landlord's submissions that the many of the issues are cosmetic in nature, and although the home was rented "as is", I remind the landlord of their obligations under section 32 of the *Act* as set out above.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenants' application to recover the filing fee for the dispute related to the rent increase. As the tenants' were partially successful with their other claims, I allow the tenants to recover half of the filing fee for their other application. The tenants may choose to give effect to this monetary award by reducing a future monthly rent payment by \$50.00.

Conclusion

I order the landlord to retain the services of a licensed duct cleaning company to clean and make repairs to the ducts as necessary on or before May 16, 2021.

I order that the landlord contact the pest control company to deal with the pest issue on or before May 16, 2021, and on an ongoing basis as long as the tenants continue to have this issue.

I order the landlord to retain the services of licensed company to inspect and, as required, repair the rental unit to an adequate level of occupancy as set out in sections 32 and 33 of the *Act*. I order that the landlord complete this on or before May 16, 2021.

I order the landlord to retain the services of a licensed remediation company to inspect and perform remediation as required in this rental unit to ensure that the rental unit meets health and safety standards.

I order that the landlord obtain a written report of the above-noted inspection by licensed tradespeople and provide a copy of this report to the tenants within one week of the landlord having received this report.

I order the landlord to undertake this inspection and undertake necessary repairs performed by licensed tradespeople as soon as possible.

In the event that no repairs or remediation is required, I order that the landlord obtain a report from a licensed remediation company confirming this, and provide this to the tenants within one week of obtaining a copy of this report.

I allow the tenants to recover \$50.00 of the filing fee for one of their applications. I allow the tenants to implement the monetary award by reducing a future monthly rent payment by \$50.00. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$50.00 and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' applications are dismissed without leave to reapply.

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: April 14, 2021