



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: RP RR FFT
 LL: MNDL-S FFL

Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants named the landlord CDS and applied for:

- An order for repairs pursuant to section 33;
- Authorization to reduce rent pursuant to section 65; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord BS confirmed they represented both named landlords. The tenant SA confirmed they represented both named tenants.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them together at the same hearing.

I was originally scheduled to only hear the tenants' application but as the parties testified that they were prepared to proceed, consented to the matters being combined, and as I find that the applications pertain to similar issues of damage to the rental unit and the same facts would be considered, I ordered that the matters be combined.

Issue(s) to be Decided

Should the landlord be ordered to make repairs to the rental unit?

Is the tenant entitled to a reduction in rent?

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to recover their filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in November 2019. The monthly rent is \$1,850.00 payable on the first of each month. A security deposit of \$925.00 was collected and is still held by the landlords. The rental unit is a single detached home.

The tenant submits that at the start of the tenancy they noticed the smell of gas in the rental unit and had a technician from the natural gas utility attend the rental unit. The tenants alerted the landlord of the issue and forwarded a copy of the inspection tag prepared by the utility company in a text message conversation dated November 19, 2020.

The landlord submits that they arranged for a technician to attend the rental unit in November 2020 in response to the tenant's complaints and believe the issue has been resolved. The landlord submitted into documentary evidence a copy of a text message conversation with the technician they retained where they report the issue has been resolved by removing the top of the stove and tightening the valve to the main gas tube.

The tenant says that the issue was not adequately resolve and a technician from the utility company noted in a subsequent inspection on February 26, 2021 that there were issues requiring intervention. A copy of the inspection tag was submitted into evidence and it notes, defects found in the venting and recommends servicing appliances regularly and installing a vent.

The parties agree that no further work or intervention was done for the stove. The tenant testified that they purchased a convection oven which they have been using as a substitute for the stove in the rental unit.

The parties submit that the dishwasher in the rental unit malfunctioned on December 25, 2020 causing water damage to the floors of the suite. The tenants alerted the landlord of the issue on that date but due to the holiday season the landlord was not able to assess or attend to the issue immediately.

The landlord attributes the malfunctioning of the dishwasher to the tenants allowing vermin to enter into the rental unit and chew through walls and hoses. The landlord seeks a monetary award for the costs of repairs and maintenance they incurred due to the water damage to the rental unit.

Analysis

Section 32 (1) of the Act states that:

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.

Residential Tenancy Act Regulations Schedule 8, in relevant part, states:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

In accordance with the above, I find that the landlord was responsible for making necessary repairs in a timely basis and maintaining the rental unit in a state of reasonable decoration and repair. I find that the landlord's obligation extends to taking reasonable measures in response to issues raised by the tenants about deficiencies in the rental unit.

While the landlord submits that the steps taken to address the stove issue is reasonable, based on the evidence of the parties, I am unable to agree. While the landlord submits that they retained a "certified gas installer" to inspect the rental unit there is little documentary evidence supporting the credentials of the person selected or that the inspection was reasonable or appropriate to deal with the matter at hand. I find a text message exchange between the landlord and their agent to be insufficient to establish that the nature of the inspection and repairs were appropriate or sufficient. The subsequent inspection note from the utility company in February 2021 noting the existence of deficiencies requiring intervention demonstrates that further work was required. I find it is not open for a landlord to arrange for one inspection and consider their duties to be sufficiently completed when the utility company is advising further work is appropriate.

Under the circumstances I find it appropriate to order that the landlord perform the work advised by the utility company in their note of February 26, 2021. Specifically, the landlord is ordered to:

- 1) Have the gas range and oven serviced by a licensed professional by June 30, 2021; and
- 2) Install a venting system for the gas range and oven approved by the licensed professional by July 30, 2021.

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. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

The parties agree that since December 25, 2020 the dishwasher in the rental unit has been non-functional. The landlord attributes the damage to the dishwasher, and the subsequent water damage to the rental suite, to the tenants. The landlord suggests that the tenant was negligent in allowing the ingress of pests and vermin into the rental unit. I find little evidentiary support for the landlords' position. I find little evidence that the tenant allowed intentionally or negligently for pests to enter the rental unit. I find the landlords' suggestion to be contrary to reasonable behaviour on the part of both a tenant and wild animals. It strains credulity to believe that the tenants allowed the suite to be invaded by mice and other animals that caused damage to the rental unit.

I find that the landlord's submissions that they advised the tenant to dry the areas of the rental suite facing water to not be supported in the documentary materials. It is evident from the text message conversation submitted into evidence that the landlord was made aware of the water ingress issue promptly by the tenants in December 2020 and the landlords responded that they will review the issue in the new year, after the holidays. The landlords did not advise the tenants as to emergency plumbing services that could be called or measures they should take in the interim. Based on the evidence I find no breach of the *Act*, regulations or tenancy agreement that would give rise to a monetary award in the landlords' favour.

I also note that the landlord is seeking costs for repairs and work done to the rental unit but has not failed to provide any receipts, invoices or estimates to support the amount of their monetary claim. Accordingly, I dismiss the landlords' application in its entirety.

I accept the submission of the tenants that the loss of use of the dishwasher in the rental unit has had some impact on the value of the tenancy and their daily routines. The signed tenancy agreement and subsequent renewals of the agreement expressly provide that the dishwasher is an amenity included in the monthly rent. I accept that a dishwasher is an appliance that is used frequently by the tenants, daily and often multiple times during a day. I accept that the loss of the dishwasher would result in a marked change in the tenants' daily routines as they would need to spend greater amounts of time washing dishes by hand.

When the need for repairs to the appliance was raised by the tenants on December 25, 2020 the landlord did not take action for several weeks then only to advise the tenant on January 10, 2021, "Pls keep the dishwasher valve off and consider it not in service".

The subsequent correspondence between the parties demonstrates a quickly deteriorating relationship wherein the landlord insults, accuses and threatens the tenants by writing such messages as:

- I will update you with the damage that is done as a result of your ignorance. I cant even believe this !!!!
- You will be held accountable for the damage and will be paying for them.
- I asked you to NOT approach [third party] you ignorant fuckjng bitch. There. Now you can say you have not been insulted but rather called out about what you are !!!

Based on the evidence I am satisfied that the tenants have suffered a loss in the value of the tenancy due to the loss of the dishwasher appliance and the refusal of the landlords to make repairs. The tenants suggest the value in the loss of the tenancy to be \$750.00, the equivalent of approximately 6.75% of the monthly tenancy for the period of January through June 2021 when the dishwasher was unavailable. I agree that the amount is appropriate and reflects the loss suffered by the tenants. Accordingly, I issue a monetary award in that amount in the tenants' favour.

As the tenants were successful in their application they are also entitled to recover their filing fee from the landlords.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

The landlords are ordered to make repairs to the rental unit as noted above.

I issue a monetary order in the tenants' favour in the amount of \$850.00, allowing for recovery of their filing fees and the loss of value in the tenancy. The landlords must be served with this Order as soon as possible. Should the landlords 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.

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: June 8, 2021

Residential Tenancy Branch