



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC RP

Introduction

This hearing dealt with the tenant's 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 requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The tenant attended the hearing. He was assisted by his social worker ("**JJ**"). The landlord was presented by its property manager ("**RO**"). All were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. The tenant was assisted by his social worker ("**JJ**").

The tenant testified, and the RO confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. RO testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

I note that the tenant provided two video files to the Residential Tenancy Branch (the "**RTB**"). These files both exceeded the size the RTB evidence system could accommodate (both over 1 GB). The RTB advised the tenant of this in advance of the hearing, but video files of a lesser size were not provided. As such, I am unable to consider any video evidence the tenant attempted to submit in support of his application. I advised the tenant of this at the outset of the hearing, and he indicated that he understood.

Preliminary Issue – Identity of the Landlord

On the application, the tenant listed the landlord as a corporate entity. On many of the documents submitted into evidence by the tenant, the landlord is listed as an individual ("**AT**") whose surname is part of the corporate entities' name. RO stated that AT, and not the corporate entity, is the correct landlord. The tenant agreed.

By consent, I order that the application be amended to replace the corporate landlord with that of AT (full name listed on the cover of this decision).

Issues to be Decided

Is the tenant entitled to:

- 1) an order that the landlord comply with the Act and
- 2) an order to the landlord to make repairs to the rental unit.

Background and Evidence

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

The parties gave conflicting evidence as to when the tenancy started. The tenant testified it started on February 1, 2015. He submitted a copy of a written tenancy agreement signed by himself and RO dated February 1, 2015, which indicated that monthly was \$600 and a \$300 security deposit was paid. RO testified that the tenancy started on October 1, 2017, that rent was \$625 at the start of the tenancy, and that the tenant paid a security deposit of \$312. He submitted no documentary evidence in support of this testimony. He could not explain how the February 1, 2015 tenancy agreement came into existence. He speculated it was mis-dated.

The parties agree that rent is currently \$640, having been raised to that level on April 1, 2019 pursuant to a notice of rent increase issued December 31, 2018, which indicated that monthly rent was \$625 as of that date, and that "this [was the tenant's] first rent increase [and] the date [the tenant's] rent was established [was] 01/11/17" (being November 1, 2017).

The tenant testified that the rental unit has the following deficiencies that require repairing:

- 1) missing window on the front door of the rental;
- 2) large holes cut into the ceiling by the landlord four years ago to access plumbing to fix a leak;
- 3) mold growing between the floorboard caused by the refrigerator flooding;
- 4) missing exhaust fan over kitchen range;
- 5) no smoke detector;
- 6) broken toilet; and
- 7) broken refrigerator.

The tenant submitted photos of the damaged front door, the holes in the ceiling, the mold growing between the floorboards, and the hole in the range where an exhaust fan should be. He submitted no documentary evidence to support his allegation that the toilet or refrigerator was broken or that the smoke detector was missing.

During the hearing, RO agreed to repair the holes in the tenant's ceiling, so I will not discuss this matter further.

The tenant testified that the window had been missing from the front door since 2017, and that the rental unit had been robbed as a result. He testified that he has covered the window with a cloth and that he is asked landlord "a million times" to repair it but no work has been done. He is not submitted any documentary evidence supporting his allegation that he has made any such requests.

RO testified that the window in the front door was there at the start of the tenancy. He testified that it must have been broken by the tenant or his guest. He did not say when this damage occurred. He stated that the tenant told him that he would fix the broken window himself, but never did.

RO denied that there was mold growing between the floorboard caused by a flooded refrigerator, or anything else. He testified that the black material shown in the photograph submitted by the tenant is grime and the residue from worn off finishing material used on the floorboards. He testified that this discoloration was present at the time the tenant moved into the rental unit and that the tenant did not object to it. Neither party submitted a copy of the move-in condition inspection report, so I cannot verify if this was the case.

RO admitted that the exhaust fan was missing from the range. He testified that, at some point during the tenancy, it broke, so he removed it to have it repaired. He testified that once it was repaired, he contacted the tenant to schedule a date it could be reinstalled, and the tenant told him that he would do it himself. So, RO testified he left the exhaust fan with the tenant and assumed that the tenant had installed it.

RO testified that a smoke alarm inspection is done once a year. He testified that the fire department attended the rental unit in October 2020, and that the smoke detector was replaced then. He denied that the smoke detector was missing or, if it is, that it is the landlord's responsibility to replace it.

The tenant testified that the toilet constantly gets blocked, and that he has to plunge it for 30 minutes after each use to make sure it flushed. He testified that he has notified the landlord of this several times, but that the landlord has not attended the rental unit to fix it.

RO testified that the tenant only notified him once, four months prior, that the toilet was not flushing properly. He testified that, as the tenant had not advised him of the problems a second time, he assumed that it had worked itself out. He also noted that the tenancy agreement submitted into evidence by the tenant states:

All drains/toilets are checked at move in. Tenant is responsible for unplugging if drains or toilets become clogged.

As such, he argued that it is the tenant's responsibility, and not the landlord's, to unclog the toilet.

The tenant testified that the refrigerator leaks water, makes "bad" noises, and has caused water damage to the floor (as described above). Other than the photograph of the floor, he provided no documentary evidence to support this part of his claim. He testified that the fridge which was in the rental unit at the start of the tenancy was replaced in 2017. Then, after he continued to experience issues with the replacement fridge, the landlord removed it and re-installed the original fridge. The tenant wants it replaced.

The landlord testified he installed a new refrigerator in the rental unit in March 2020. He denied that it was one that was previously installed in the rental unit. He testified that he has not received any complaints about this new fridge since it was installed. He denied that it is defective or requires replacement.

Analysis

Section 32 of the Act addresses landlord's and tenant's obligations to repair. It states:

Landlord and tenant obligations to repair and maintain

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the 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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application.

So, the tenant must show that it is more likely than not that the landlord breached section 32 of the Act by failing to repair or maintain the rental unit as required.

I will first address the items the tenant seeks repaired or replaced for which he has provided no documentary evidence supporting his claim. The tenant testified that the smoke detector is missing, the refrigerator is broken, and the toilet is plugged. The landlord denied that this was true. The tenant provided no documentary evidence to support these claims. As such, I find that the tenant has failed to discharge his evidentiary burden to prove that the landlord breached the Act with respect to these items. Accordingly, I decline to order that the landlord make any repairs to these items.

Similarly, I find that the tenant has failed to show that there is mold growing between the floorboards. I accept that there is some dark substance between the floorboards, but I cannot tell what the substance is from the photograph submitted into evidence. I have no basis to find that it is mold. I do not find that the presence of this dark substance causes the rental unit to be in a state of repair or decoration unsuitable for occupation. As such, I make no order with regard to this part of the tenant's application.

Based on the testimony of the parties and the photograph of the door, I find that the front door of the rental unit is missing a window. The tenant testified that he did not break the window. The landlord did not testify as to the cause but speculated that it was the tenant or his guest that damaged it.

I cannot say how the window came to be missing. However, I find it unlikely that the tenant would have removed the window himself. I have no reason to think a guest of his removed it either. It may be that the window fell out due to misuse of the door. It may be due to faulty installation. It may be due to the actions of a third party, unaffiliated with the tenant.

In the circumstances, I am not satisfied that this damage was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. As such, I find that the landlord is obligated to repair the damage, by installing a new window, per section 32(1) of the Act. I find that a hole in the front door makes the rental unit not in a condition of repair suitable for occupation by the tenant.

Based on the testimony of the parties, I accept that the exhaust fan above the stovetop has been removed by the landlord so that the landlord could have it repaired. I accept RO's testimony that the tenant told him he would re-install it himself. I also accept that

the tenant never did this. However, it is not the responsibility of the tenant to install fixtures or appliances which have been removed from the rental unit by the landlord, notwithstanding the tenant's willingness to do so. The tenant initially said he would install it. Now he wants the landlord to do so. He is entitled to change his mind. RO did not provide any evidence as to how the landlord would be prejudiced if the landlord was required to re-install the exhaust fan. He is merely being put into the same position he would have been in had the tenant not volunteered to install the exhaust fan himself.

As such, I order that the landlord re-install the exhaust fan.

I order that the landlord make these repairs by July 31, 2021. If he does not, the tenant may withhold \$100 from August 2021 rent. If the landlord does not make these repairs by August 31, 2021, the tenant may withhold a further \$100 from September 2021 rent, and so on until monthly rent is reduced to zero. Rent will revert to its original amount (\$640) once the repairs are made.

Conclusion

By consent, I order the landlord to repair the holes in the ceiling of the rental unit.

I order that the landlord install a window in the front door of the rental unit and install an exhaust fan over the kitchen range on or before July 31, 2021. If he does not, the tenant may withhold rent as specified above.

The tenant must provide the landlord with all reasonable access to the rental unit to allow the landlord to make the ordered repairs within the required timeframe.

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 1, 2021

Residential Tenancy Branch