



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, MNDCT, RP**

Introduction

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

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

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 tenant JN (the "tenant") primarily spoke on behalf of the two co-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*.

Issue(s) to be Decided

Are the tenants entitled to a reduction in rent?

Are the tenants entitled to a monetary award as claimed?

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

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.

This periodic tenancy began in November 2019. The monthly rent is \$1,850.00 payable on the first of each month. There is no written tenancy agreement. The rental unit is a basement suite in a single detached home with the landlords occupying the main floor of the rental building.

The tenants submit that the rental unit requires major repairs to make it safe for residence. The tenants submitted into evidence copies of correspondence with the landlords identifying issues and requesting work to the rental unit and photographs of the suite. The tenant gave evidence that the bathroom tiles and grouting are loose, chipped, discolored and riddled with holes. The tenant says that the bathroom has been an issue since shortly after the tenancy began. While the tenants are able to use the bathroom the issues are noticeable and they believe contribute to water damage to the building and growth of mould in the suite.

The parties testified that there was an incident of water ingress to the rental unit during the tenancy and as a result the flooring of the suite was damaged and needed to be replaced. The parties agree that the landlord performed some work on the rental suite in 2020 and offered the tenant a total discount of the monthly rent in the amount of \$1,200.00 during the period when work was being performed.

The tenant submits that the flooring work was improperly done and the rental unit now is in a hazardous condition with loose baseboards and nails exposed. The tenant AN says they vacated the rental unit as their physical condition made walking around in the rental unit particularly treacherous. AN suffered some injuries due to the exposed flooring. The tenant testified that they continue to reside in the rental unit but the issues are noticeable.

The tenant testified that the oven in the rental unit was replaced on May 3, 2021 but the unit provided by the landlord does not work properly. The tenant says that the oven does not allow for regulation of temperature. The interior temperature increases when used causing foodstuffs to be charred and posing a fire hazard to the rental building.

The tenant also expressed concern that the oven was installed by the landlord and they doubt the landlord's qualification to properly install hardware in the rental unit.

The tenants suggest a retroactive reduction in rent in the total amount of \$1,750.00 is appropriate given the impact the landlord's failure to repair and maintain has had on the value of the tenancy. The tenants also seek a monetary award in the amount of \$3,300.00 for various costs incurred when the rental unit was unusable and moving expenses for the tenant AN who needed to vacate the property.

The landlord gave lengthy testimony regarding the history of the occupants of the rental unit and the numerous conflicts they have engaged in with the various occupants. The landlord submits that the repairs have been performed to professional standards when requested. The landlord submits that they have provided sufficient monetary compensation by way of rent abatements when there was ongoing work in the rental unit. The landlord submits that the oven provided to the tenant is in good working condition and any issues must be due to operator error. The landlord disputes that any further work is required in the rental unit, says that they were removed from the suite by the tenants when they were attempting to inspect and perform work, and complained about unpaid rent.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and that makes it suitable for occupation.

I am satisfied with the evidence of the tenants including their testimony, photographs and documentary submissions that the rental unit has multiple deficiencies that must be addressed to bring it up to reasonable standards. I find the landlord's submission that they have incurred costs and have performed some work to be irrelevant to the matter at hand. The landlord is not absolved of their duty to maintain the rental suite simply because they have taken some steps or incurred some costs, if the resulting suite is not in a state of proper state of repair.

I find the tenant's evidence to be sufficient to establish on a balance of probabilities that there are issues that must be addressed to bring the rental unit up to a state of reasonable repair. I do not find the landlord's submission that they have attempted repairs but have been prevented by the tenants to be supported in the materials or to

have an air of reality. Similarly, I do not find the landlord's submission that the oven is in good order and any issues arise from operator error to be reasonable. Based on the totality of the evidence of the parties I am satisfied that the rental unit has several issues in need of repair. I therefore find it appropriate to order that the landlord perform the following:

- 1) Complete repairs to the rental unit bathroom including, replacing broken tiles, regrouting, and fixing any leaks.
- 2) Repair all floor coverings for the rental unit
- 3) Replace or repair oven in the rental unit

As these issues have been ongoing for a great length of time during the tenancy I find it appropriate to order that the repairs be completed by September 15, 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.

I find insufficient evidence in support of the tenants' monetary claim. The tenants have provided little invoices, receipts or bills showing that they have incurred losses as a result of the landlord's breach. While I accept that the tenant AN moved out of the rental unit, as the other tenant JN remains in the suite, I am not satisfied that their departure was necessary or caused by any act or negligence on the part of the landlord. I find the tenants have provided insufficient evidence to establish that they have incurred costs or losses attributable to a breach on the part of the landlord and consequently dismiss this portion of the tenant's application.

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 landlord's failure to deal with the issues in the rental unit in a timely manner has had some negative effect on the value of this tenancy.

I find that the most noticeable issue is the loss of use of the oven in the rental unit which occurred on May 3, 2021. The tenant gave evidence about the impact that the loss of the oven and being able to cook had on their daily activities. I accept that the tenant's lifestyle was negatively affected by the loss of the oven. I accept the evidence of the tenant that they have been able to continue to reside in the rental unit, use the bathroom despite the deficiencies. I also note that the tenant has been compensated for those periods when there was major work being done inside the rental unit.

Taking all of the above into consideration I find that a one-time monetary award of \$500.00, a value equivalent to approximately 25% of the monthly rent, to be appropriate. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$500.00 from their next scheduled rent payment.

I further order that the monthly rent for this tenancy be reduced by \$150.00, approximately 8% of the rent under the tenancy agreement, until such time as the repairs ordered above are completed. I order that the tenants' rent will return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

Should a dispute arise as to the extent to which the repairs have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with this decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with the decision once the landlord has undertaken the repairs ordered.

Conclusion

The landlords are ordered to perform the following repairs to the rental unit by September 15, 2021:

- 1) Complete repairs to the rental unit bathroom including, replacing broken tiles, regrouting, and fixing any leaks.
- 2) Repair all floor coverings for the rental unit
- 3) Replace or repair oven in the rental unit

The tenants are issued a one-time retroactive reduction of rent in the amount of \$500.00. I order that the tenants may reduce the amount of their next monthly rent payment to the landlord by this amount.

I order that the monthly rent for this tenancy beginning with September 2021 is reduced by \$150.00. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

The balance of the tenants' application is 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: August 5, 2021

Residential Tenancy Branch