



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order requiring the landlord to carry out repairs, pursuant to section 32; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

The tenants affirmed they asked the landlord to repair the floor of the balcony and the repairs were completed on May 30, 2021. The landlord stated he believes he completed the repairs between May 21 and 30, 2021.

Based on the testimony offered by both parties, I find, on a balance of probabilities, that the landlord completed the repairs on May 30, 2021.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be

determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss this application for an order requiring the landlord to carry out repairs.

Thus, the issue to be decided is: are the tenants entitled to an authorization to recover the filing fee for this application?

Both parties agreed the tenants asked the landlord in writing on April 14, 2021 to conduct the repairs.

The landlord emailed the tenants on May 06, 2021:

So, if the damage was not caused from normal wear & tear, it is not my responsibility to repair it. That responsibility it [SIC] yours. You may be successful in convincing the new owner to replace the patio due to bad rotten areas, however, I do not determine that it is rotten.

Repair it is you wish or work it out with the new owner as I am not repairing which is your responsibility and not mine.

The tenants replied on May 07, 2021:

I am continuing with the dispute resolution online today. If you agree to fix it I will cancel the application. This is not our responsibility to fix nor is it the new owners. We pay rent to you right now.

The tenants submitted this application on May 11, 2021.

The landlord testified he decided to conduct the repairs after the May 06 and 07, 2021 emails. The landlord said he informed the tenants he agreed to conduct the repairs and started the repairs before May 21, 2021.

The tenants affirmed the landlord did not inform them that he agreed to conduct the repairs until May 21, 2021 and they were not aware that the landlord started to conduct the repairs before May 21, 2021.

The landlord stated he worked on the repairs diligently. The landlord sold the rental unit in May 2021.

Based on the tenants' convincing testimony and the emails dated May 06 and 07, 2021, I find the landlord did not inform the tenants until May 21, 2021 that he agreed to conduct the repairs requested in writing on April 14, 2021.

As the tenants submitted this application on May 11, 2021, I find that when the tenants submitted this application they did not know that the landlord agreed to conduct the repairs. Thus, I find the tenants are entitled to an authorization to recover the filing fee.

Conclusion

Pursuant to section 72 of the Act, I order the landlord to pay the tenants \$100.00. As the landlord sold the rental unit in May 2021, I grant the tenants a monetary order in the amount of \$100.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order. 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.

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: September 21, 2021

Residential Tenancy Branch