



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUATERRA MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP RR FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$1,002.48, a rent reduction related to the replacement of drapes, for regular repairs to the drapes, and to recover the cost of the filing fee.

The tenants, an agent for the landlord, CF (agent), a landlord accountant, RL (accountant) and the resident manager for the landlord, EDS (manager) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had been served with the documentary evidence from the other party and had the ability to review that evidence, I find the parties have been sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

The parties also confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to a rent reduction or an order for repairs to the unit, site or property under the Act?
- If yes, are the tenants entitled to the return of the filing fee under the Act?

Background and Evidence

The tenancy began on February 1, 2016. The agent testified that at the start of the tenancy, the drapes were brand new so are just over 5 years old as of the date of the hearing. The tenants stated that the drapes have been damaged by the sun and daily use and have become fragile to the point that they are cutting or splitting in the same direction throughout the drapes.

Two photos were submitted by the tenants. Photo 1 shows what appear to be 2 small tears; however, the size of those tears can not be determined as there is no measuring tape or other item next to the tears to provide context. Photo 2 shows a total of 6 tears with a hand in the photo for some context. In that photo, there is one tear on the left curtain and 5 tears all in the same direction and in line with each other vertically, with the larger tear on the top and smaller tears below it. The size range of the tears appear to be one inch to three or four inches in width.

The agent stated that they have 216 units in the building and that this unit is the only one where the tenants have claimed the drapes are defective. The landlord submitted photo evidence to rebut the tenants' claim, which is comprised of what the agent described as follows:

1. Unit 2602 showing no damage for drapes installed in 2013, which is 3 years before this tenancy began.
2. Unit 2002 showing no damage for drapes installed in 2016, which is the same year this tenancy began.
3. Both units 2602 and 2002 are facing the same direction of the sun as the tenants' rental unit on the 12th floor.

The accountant stated that both photos were taken in August 2021. Although the agent testified that plastic rods are on the drapes to use to open and close the drapes, the tenants stated that their drapes are missing the rods described by the agent.

The estimate used by the tenants to support the value of the drapes replacement cost of \$802.48 is based on an email from the landlord dated June 10, 2021 (Email). In the Email, the landlord responds to the tenants' request for new drapes and denies their request based on the drapes lasting 10-12 years with normal wear and tear or longer, and that they have never experienced this type of tearing issue that the tenants have. The landlord also writes that it is the tenants' responsibility to maintain the drapes and keep them in a clean, undamaged condition and that should the tenants wish to purchase new drapes, the cost is \$802.48. The agent also stated that in the past, if other tenants damaged their drapes, those tenants have paid to have the drapes replaced.

The manager testified that in their experience, the damage shown by the tenants is consistent with kids hanging from them or washing the drapes with hooks still on the drapes; however, the tenants stated that they do not have children and deny that they have abused the drapes in any way and that the tears have occurred due to sun damage. The tenants stated they have washed the drapes but did not use bleach and removed all hooks before washing the drapes.

The tenants stated that the cuts or tears are small and in a regular pattern and they do not have the plastic rods described by the landlord and did not know to ask for them as they did not know the drapes were supposed to have the plastic rods/pulls for opening and closing. The incoming Condition Inspection Reports does not list "plastic rods" or "pulls" where the drapes/blinds are listed.

The agent stated that they are left to guess as to what caused the damage but that the landlord has 500 other apartments and that the landlord just does not see this type of wear and tear in any 5-year tenancy. The manager stated that many tenants have their windows open in the summer with the drapes closed and that the drapes can blow out of the window and get ripped by catching on something sharp outside or snag on something outside. The tenants asked why there would be sharp items outside the building and questioned how they are supposed to take the landlord's word that they are the only unit with this issue if they have seen this type of damage with other tenants and also stated that they have air conditioning in their unit.

The agent testified that the manager has only started in their position about three months prior to the hearing and that prior damage witnessed was paid for by the tenants as those tenants were not alleging a defect with the drapes. The agent stated that if other tenants ripped them, those tenants would pay for new drapes. The agent also testified that under no circumstances has the landlord had to replace drapes under 10 years from normal wear and tear. The tenants stated that they do not have access to the landlord's records to confirm that statement and stated that the landlord did not submit documentary evidence to support no wear and tear issues with blinds for the tenants to review. The agent stated that they have been with the building for 25 years now, which includes a 23-year current period, and a prior period of 2 years before that and is speaking from experience.

The tenants stated that about 9-10 months ago, they had a verbal discussion with the building manager at the time (prior manager) and showed the prior manager that they felt the drapes lost their durability due to the sun. The tenants stated that the prior manager said "we will fix it" but do admit that there was no discussion about who would pay to fix the drapes. The agent stated that they were not there for that discussion and that the landlord would first have to check the age of the drapes for any tenancy and that due to COVID the landlord is focussing on emergency repairs only lately.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the matter before me, I have considered RTB Policy Guideline 40, Useful Life of Building Elements (PG 40). Drapes are listed in PG 40 as having a useful life of 10 years and having viewed the photo evidence and considered the testimony of both parties, I find the tenants have failed to meet the burden of proof. Both parties have provided their version of how the tears or rips may have occurred; however, I have no evidence before me that other drapes of similar age have similar tears or rips. I afford significant weight to the landlord's photos which show two other units facing the same direction to the sun as the rental unit, which show no tears or rips. In addition, I find that the tears or rips are more likely caused from blowing out of the windows, which I find has the ring of truth to it and is the most likely cause versus defective drapes.

Given the above, I dismiss the tenants' application due to insufficient evidence.

As the tenants' application has been dismissed, I do not grant the filing fee.

Conclusion

The tenants' claim is dismissed without leave to reapply, due to insufficient evidence.

The filing fee is not granted as a result.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 6, 2021

Residential Tenancy Branch