



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mary Street Apartments Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, ERP, RR, LRE, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to make repairs to the rental unit;
- an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons;
- a reduction in monthly rent;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- recovery of the filing fee.

The tenant and the landlord's agent (agent) and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing 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, both parties affirmed they were not recording the hearing.

The landlord confirmed receiving the tenant's evidence. The landlord did not submit evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

In reviewing the tenant's application there are several matters which have previously been decided upon by another arbitrator, in a Decision, dated April 6, 2021, on the tenant's application for repairs and other issues. Filed in evidence was a copy of the previous Decision.

I informed the tenant that I cannot re-decide the issues previously decided by another arbitrator, as those matters are now *res judicata*.

I informed the tenant that I would consider any new requests for repairs and any new issues raised in her present application before me.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs and emergency repairs to the rental unit?

Is the tenant entitled to a reduction in monthly rent?

Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

Background and Evidence

This tenancy began on September 1, 2010 and current monthly rent is \$665. Filed in evidence was a copy of the written tenancy agreement.

As mentioned, there were previous matters decided upon by another arbitrator and are therefore excluded from consideration. These matters are the tenant's request for the ducting to be inspected and cleaned, a new humidity controller be installed, repairs made to the closet to find the source of the water leak and replace the linoleum.

In response to my inquiry, the tenant said that the new request for repairs in her present application are requests that the intercom to the building be repaired, the hallway carpets vacuumed, and a working patio screen door.

The tenant submitted that the intercom has now been fixed.

The tenant submitted that the carpet is never vacuumed outside her rental unit and that she has vacuumed the carpet herself.

The agent said he checked the carpets and they are clean.

As to the working patio screen door, the tenant submitted that on the occasion when ice formed on the inside and outside of the door, the ice melted. This resulted in the maintenance man taking away the wheels, causing the tenant not to have a working door. The tenant said that she has never had a working patio door.

The agent said that he did not get the message about the patio screen door. The landlord arranged with the tenant at the hearing to pick up the old screen door on October 6, 2021, at 5:00 pm and will be able to replace the door within 2-3 weeks of the hearing.

As to her request for a reduction in monthly rent, the tenant submitted that the landlord's agents put caulking on the overhang which backs into her closet on September 21, 2021, and since then, there has been no moisture. The maintenance man put two holes in the wall to see where the source of the moisture and because of that, the closet now needs painting.

The tenant said that she has not seen any ducting work being done, but agreed that the maintenance man went outside and checked the dryer vent, reporting to her there was no problem.

The tenant said that on July 7, 2021, the maintenance man came by to install a new humidistat, but he did not do so. The tenant submitted that the maintenance man

instead left the instructions. The tenant said that when the agent came in September 2021, the tenant asked him to look at the humidistat, as it was constantly running from September 21-25, 2021. The tenant said that she turned the humidistat off herself, because it is a sensor and once the relative humidity level is reached, it turns off automatically. This was not done in this case.

The tenant claimed \$300 per month.

In response, the agent agreed that the caulking was not done until September 21, 2021, because the maintenance man had to inspect the closet to see if there was a leak and there had been very little rain during the summer. The agent said there was not a leak.

The agent said that the hallway will be re-painted in the near future and the closet will be repainted at that time.

The agent said he wanted to replace the bathroom fan, and that on September 24, 2021, the tenant refused to allow the replacement. The landlord disagreed that the sensor was not working.

The agent said that repairs and replacements take longer in this case because the residential property is an old building and it is therefore harder to get parts. The agent said the old fan was not working, but the tenant would not allow it to be replaced.

As to the tenant's request for an order suspending or setting conditions on the landlord's right to enter the rental unit, the tenant submitted that she wanted the current property manager to show up when he says he will. The tenant submitted that the agent told a fellow tenant that they would be at her rental unit on April 12, 2021, and they did not come. Then, according to the tenant, the agent and maintenance man were to come by on other occasions, but they did not.

Analysis

I have considered the relevant evidence presented by the parties and find the following, based upon a balance of probabilities.

As to the tenant's original request for repairs, those issues were previously decided by another arbitrator, as shown by the tenant's application.

As to the new issues presented, the tenant confirmed that the intercom was now repaired and no longer an issue.

As to the tenant's request that the landlord have the carpet vacuumed, Section 32 of the Act states that a landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

It is important to note that 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. The tenant has the burden of proof regarding all items and issues sought in her application.

In this case, I find the tenant submitted insufficient evidence to support that the matter of the state of the carpet outside her rental unit is a health or safety concern. The landlord said that he inspected the carpet and it was clean, and without more, I find the tenant has not met her burden of proof on a balance of probabilities.

As to the tenant's request for a new patio screen door, the agent said he was not aware that the door was an issue, but now that he is, the door would be replaced within 2-3 weeks. I therefore find that it was not necessary to issue an order to the landlord at this time. Should the landlord fail to replace the door as promised, the tenant is entitled to file an application seeking monetary compensation for the lack of the replacement door.

As to the tenant's request for a reduction in rent, the tenant's monthly rent is \$665, and her claim is for a monthly reduction of \$300. I do not find the tenant submitted sufficient evidence to support that she is entitled to receive a 45% reduction in the value of her tenancy. While the tenant may have been inconvenienced at times since the last hearing in April 2021 while waiting for the previously ordered repairs, the tenant had full use and occupation of the rental unit and was not deprived of any of her essential services.

In reviewing the previous Decision, I find, however, that not all the repairs ordered by the previous arbitrator were made within the time required. As such, I find the tenant is entitled to receive some compensation.

In considering the amount of that monetary compensation, I find the agent provided a reasonable explanation why some of the repairs were not timely made, such as the difficulty in obtaining parts for an older building and that fact that there was an insufficient amount of rain to determine where the leak in the tenant's closet came from. Once there was that determination, the caulking was done and the issue was resolved.

I additionally was unable to determine if the matter of the humidity controller was left unrepaired, as the previous arbitrator ordered the landlord to provide the instructions and the tenant was ordered to follow those instructions. The landlord provided the instructions. The landlord was ordered to repair the exhaust fan, but the tenant refused to allow the replacement. For this reason, I find the landlord cannot be held responsible for the repair to the exhaust fan.

Additionally, the landlord repaired the intercom and has promised to replace the patio screen door, now that he is aware of the issue.

However, in recognition that the repairs were not made within the time required, I find the tenant is entitled some compensation and I find a reasonable amount of be \$150, or a monthly rent reduction of \$30 per month, from May 2021, the month after the previous dispute resolution Decision, through September 2021, the month the caulking was done.

As to the tenant's request for an order suspending or setting conditions on the landlord's right to enter the rental unit, I find this is not a proper request. This request is made in relation to when a landlord improperly enters a rental unit, not when the landlord does not come by the rental unit, as the tenant claims.

I therefore dismiss the tenant's request for this order.

As to the tenant's request for an order requiring the landlord to make emergency repairs, the tenant did not present evidence that there were emergency repairs to make. Therefore, this claim is dismissed.

As the tenant had some success with her application, I grant her recovery of her filing fee of \$100.

For the above reasons, I grant the tenant a monetary award of \$250, comprised of \$150 for a reduction in monthly rent of \$30 from May 2021, through September 2021, in

recognition that the ordered repairs were not timely made, and recovery of the filing fee of \$100.

I order the tenant to deduct the amount of \$250 from a future monthly rent payment in satisfaction of her monetary award. The tenant is advised to alert the landlord when this deduction is being made.

Conclusion

The tenant's request for orders for repair are dismissed, due to insufficient evidence.

The tenant's request for monetary compensation for a reduction is partially successful and she has been granted a monetary award of \$150.

The tenant's request for an order suspending or setting conditions on the landlord's right to enter the rental unit is dismissed as this was an improper request for the circumstances presented.

The tenant's request for emergency repairs is dismissed, as none were presented.

The tenant has been granted recover of the filing fee of \$100.

The tenant is ordered to deduct \$250 from a future monthly rent payment.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 29, 2021

Residential Tenancy Branch