



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, RR, MNDCT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on October 1, 2021 seeking repairs to the unit, a reduction in rent for repairs not undertaken, monetary compensation, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 7, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other and on this basis the hearing proceeded as scheduled.

Issues to be Decided

Is the Landlord obligated to comply with the *Act*, the tenancy agreement, or the regulations?

Is the Landlord obligated to make repairs to the rental unit?

Is the Tenant entitled to a reduction in rent for repairs agreed upon but not provided?

Is the Tenant entitled to monetary compensation for monetary loss or other money owed?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Landlord in their evidence produced a copy of the tenancy agreement that the Tenant signed on October 22, 2006. The agreement in its generic form conforms with the *Act*. The tenancy started on November 1, 2006, continuing on a month-to-month basis after the initial one-year fixed period. The rent amount over the course of the tenancy increased to \$1,132.50 per month, as of the time of the hearing.

The Tenant set out the issue in the rental unit that requires repair. This is the balcony where there is a “large hole”. A letter to the Landlord dated May 31, 2021 sets out miscellaneous items for repair; in the hearing the Tenant confirmed the issue of concern still remains the state of repair of the balcony. On June 23, the Tenant renewed their request for balcony repair, stating: “You have until the end of august to deal with this other wise I will take legal action.” The Tenant visited a doctor in September, allegedly for an injury they sustained while stepping on the balcony. This was a bruised and scratched right foot.

In the hearing the Tenant described the “huge big hole” in the balcony floor. The Landlord made a repair to the balcony “a few years back”; however, it started rotting again so there are two holes present. The Landlord “eventually did come up to look and saw that work done previously was not done properly.” The owner and the Landlord visited again and stated they would “look into getting a contractor”. The in-house maintenance was not able to fix this alone, so the owner pledged to hire a contractor for this issue. After the occasion of the Tenant’s injury where their foot slipped through the hole causing injury, the maintenance staff came to patch it, then placed plywood over top of the problematic balcony area. As of the date of the hearing, the Tenant submitted the Landlord “[has] no idea of what they have to do with the balcony.”

In their written submission, the Landlord noted the balcony floor was replaced by a contractor in 2014. They described the ongoing issue as attributable mainly to the Tenant, with so many items stored on the balcony that “rainwater cannot evaporate which causes damage to the balcony floor.” The Landlord provided a timeline of visits, from May 31, 2021 to September 27, 2021. This lists visits to inspect the balcony and repair other items in the rental unit. On one occasion a contractor who arrived to repair the balcony “refused to work since balcony is covered with bikes, BBQ, picnic chairs, and planters, etc.” Also, the contractor who repaired the balcony in 2014 inspected the balcony and provided that damage was caused “by moisture not being able to evaporate.” The Landlord also provided a photo of the balcony showing personal items stored there.

In the hearing, the Landlord pointed to specific pieces of their evidence and reviewed the timeline. In writing, they advised the Tenant to not use the balcony on June 2. The Landlord noted the affected area was covered with plywood as of September 27, and this was a

temporary fix. They described the project underway involving all balconies in the building, and this is the only balcony that needed a fix. The project should resume in spring 2022 with more favourable weather. The Landlord has had quotes for the project over the last couple of months prior to the hearing.

On the Application, the Tenant made the claim for monetary compensation. This is \$1,144.50, being a one-month rent amount for the month of September 2021, for “the inconvenience of having to deal with this issue several times” and \$5,000, described in the hearing as “just the compensation for everything to go through just to get to that point [i.e., the repair stage]”. In response to the Tenant’s statements of these amounts in the hearing, the Landlord submitted that they paid for the balcony, as shown in their evidence of their expense for \$7,560 in 2014 for the balcony repair.

Analysis

The tenancy agreement sets out the obligations for either party, as per the *Act* s. 32. For the Landlord, the duty is to maintain “a state of decoration and repair that . . . complies with the health, safety and housing standards required by law, and . . . having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.” Relevant to the situation in this tenancy, a tenant must maintain reasonable cleanliness throughout the rental unit and other property to which they have access. Further: a tenant must repair damage to the rental unit or common area that is caused by the neglect of the tenant.

I accept the Landlord’s evidence that their maintenance staff, as well as other contractors, visited the rental unit to assess the state of the balcony. This was based on the Tenant’s requests to them. I find the Landlord was attentive to the situation, and their repairs to other issues in the rental unit is evidence of that. The Landlord is aware of their obligation to make repairs to the rental unit; I find the Landlord is fulfilling their obligations to the Tenant in line with s. 32. For this reason, I find the Landlord is in compliance with the tenancy agreement and the *Act*; therefore, the portion of their Application where the Tenant requests the Landlord’s compliance is dismissed without leave to reapply.

The secondary piece to this the Landlord’s obligation to implement repairs, i.e., actually undertaking to complete the task based on the Tenant’s request. I find the evidence shows the Landlord has made moves to assess the immediate situation, resolving that with a temporary fix for the Tenant’s own safety. Additionally, the Landlord has provided sufficient evidence in the form of their testimony to show there is a wider-scope balcony project underway in the

building. In this regard, I find the Landlord has been fulfilling their obligation to repair deficiencies, making the rental unit itself (which peripherally includes the balcony) suitable for living by the Tenant.

I find the Tenant has thus far not maintained reasonable cleanliness on that balcony. This has compounded the problem. The Landlord's evidence was not sufficient to show how the Tenant's neglect is actually causing damage to the balcony where water is accumulating because of the Tenant's stored personal items; however, I find this to be the likely cause of ongoing problems. Instead of citing the Tenant's own neglect in the situation and making them repair the damage on their own or at their own expense, the Landlord has been working on the situation in the most efficient way under the circumstances.

In sum, I find positively the Landlord has been undertaking to complete a repair process and they have been fulfilling their obligation to make repairs to the rental unit. Reciprocally, the Tenant is obligated to maintain reasonable cleanliness so as to not cause further damage. Simply put, the Tenant needs to clean up the balcony. It may get to the point where the Landlord could assert the damage resulted from the Tenant's own neglect in that specific area.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As above, I find the Landlord has not violated the *Act* or the tenancy agreement where they have been attentive to the need for repair. This point alone precludes any compensation to the Tenant. Additionally, I find the Tenant has not shown to a sufficient degree that they were deprived of the full use of the rental unit for reasons of a lack of repair. I am not satisfied the Tenant was subject to loss of opportunity or income as a result of any alleged breach, nor is there proof that their injury caused interruption in their life. As stated in their Application, I find

at most there was an inconvenience to the Tenant in making their request known to the Landlord. This was minor in scope, and in that regard, I am not satisfied that a damage or loss to the Tenant existed.

For these reasons, I dismiss the Tenant's claim for a rent reduction, and their claim for other money owing.

Because the Tenant was not successful in their Application, I deem them not eligible for reimbursement of the Application filing fee.

Conclusion

I dismiss each piece of the Tenant's Application for the reasons outlined above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 15, 2022

Residential Tenancy Branch