



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FFT

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;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants attended the hearing. The landlords were represented at the hearing by the Property Manager. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

At the outset, I advised the parties of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing.

I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Issues to be Decided

Are the tenants entitled to:

- 1) reduced rent for repairs, services or facilities agreed upon but not provided;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting February 1, 2021. Monthly rent is \$1700.00, payable on the first of each month. The tenant paid the landlords a security deposit of \$850.00. The landlords still retain this deposit. The tenants rent a two-bedroom unit. Each tenant has his own bedroom and share the rental unit common areas: kitchen, dining room, living room with each other.

The tenants testified that soon after they moved into the rental unit, they noticed a water leak in one bedroom. They reported the water leak to the landlord on February 21, 2021. The tenants suspected the water leak was coming from the roof of the building. The landlord had a contractor inspect the leak. This resulted in holes cut into the walls of the bedroom and trash bins placed at the leak site to collect the water. The tenants were expected to empty the buckets of water as they filled.

After many unsuccessful attempts to get the landlord to repair the leak, the tenants applied to the Residential Tenancy Branch for an emergency order for repair to the roof of their rental unit. The file number of that emergency hearing is quoted on the cover page of this decision.

At the emergency hearing, the landlord testified that they had been working on getting a roofer to make the required repairs but were having difficulty finding a contractor. At the date of the emergency hearing, June 8, 2021, the leak had not been repaired. The landlord, however, did testify that they had secured a repair company to complete the repairs and agreed to have all required repairs to the roof and rental unit completed.

An emergency order was issued by the arbitrator on June 8, 2021. The arbitrator wrote, "I find that the repairs required to this rental property constitute Emergency Repairs and must be completed as soon as reasonably possible."

The tenants waited for the landlord to make the repairs. Despite the emergency order

issued by the arbitrator, no repairs were made. The leak worsened damaging the tenants' hallway and bathroom along with several other suites below.

The tenant, for more than 7 months, slept in a bedroom with large holes cut into the wall, plastic draping over those holes, and garbage bins alongside the headboard wall near the bed collecting "dirty dark brown" water that the tenant had to empty initially on a daily basis. As the leak worsened, the tenants state they had to empty the garbage bins of water 4-5 times a day. The bins were so heavy it took both roommates lifting, to empty the containers. The tenant stated when the garbage bins started filling up quickly, he was anxious about leaving the rental unit, fearing the bins would overflow and dreaded going into his bedroom. The tenants uploaded several photos of the holes in the wall, the damage, and the living conditions.

On June 18, 2021, the tenants filed a subsequent Application for Dispute Resolution under the Act requesting a rent reduction. A hearing was set for October 18, 2021 and adjourned because of a transition between property management companies. As of the date of the October 18, 2021, no repairs had been made to the rental unit and the leak had spread to the hallway, bathroom, and rental units below.

The tenants request a rent reduction in the amount of \$850.00 per month from April 1, 2021, through to October 18, 2021, the date of the initial arbitration hearing. For 7 months, the tenants paid full rent in the amount of \$1700.00. The tenants acknowledge and are grateful to the new property manager, who they describe as very responsive. The tenants stated, 'once the new property manager realized the extent of the damage, she acted quickly, finding us a new rental unit in the building'. The tenants moved into the different rental unit on November 25, 2021 and were given until December 11 to move their belongings from one unit into the other.

The property manager testified that she took over management of the buildings on October 15, 2021. She was unaware of the pending arbitration and requested the adjournment to get up to speed. The previous property management company provided no paperwork whatsoever on the issue or their remediation efforts; so, she cannot speak to what happened or didn't happen prior to her tenure.

The current property manager testified that as rental unit was unfit for habitation she took the necessary steps to address the situation offering the tenants another rental unit in the building that rents for \$1640.00 per month, a permanent rent reduction of \$40.00 per month, and one-month's rent free.

Analysis

I have not relied on any evidence of events which occurred after the October 18, 2021, adjourned hearing, in making my decision. While the information may provide corollary evidence, it is not relevant to prove whether the tenants are entitled to a rent reduction for the repairs not made from April 1, 2021 through October 18, 2021 inclusive. That evidence would include, without limiting the generality of the foregoing, any change of residence, rent reductions or other rent concessions offered by the current landlord.

As per Rule 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The tenant's application for rent reduction was made in accordance with the following provisions of section 65 of the Act, which allows me to make an order regarding past and future rent:

- 65** (1) Without limiting the general authority in section 62(3) [director's authority respecting dispute resolution proceedings] if the director finds that a landlord or tenant has not complied with the Act, the regulation or a tenancy agreement, the director may make any of the following orders:
[...]
(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.
[emphasis added]

Residential Tenancy Branch Policy Guideline 22 states an arbitrator may order that past or future rent be reduced:

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensated the tenant.

Section 65(1) of the Act should be read in concert with sections 7 and 67. Section 7, "Liability for not complying with this Act or a tenancy agreement reads in part:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is necessary to minimize the damage or loss.

Section 67, "Director's orders: compensation for damage or loss" reads:

- 67** Without limiting the general authority in section 62(3) [director's authority respecting dispute resolution proceedings] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of and order that party to pay compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets forth the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenants claim they suffered a reduction in their tenancy in the amount of 50% because of the water leak/damage from April 1, 2021 through October 18, 2021 inclusive.

Section 32 of the Act states:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that:
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Policy Guideline 01 states in part:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable, health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. This section states as follows:

- 22.** A tenant is entitled to quiet enjoyment including but not limited to, rights to the following:
- (a) reasonable privacy
 - (b) freedom from unreasonable disturbance.
 - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 39 [landlord's right to enter rental unit unrestricted]

I reviewed s. 22 of the Act in concert with Policy Guideline 6, which states as follows:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

This includes situations in which the landlord has directly caused the

interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct thee.

Temporary discomfort or inconvenience does not constitute a basis for a breach of entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach or quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA (Policy Guideline #16) [emphasis added]

I accept the tenants' undisputed testimony that they reported a water leak in the walls of their rental unit to the Landlord on February 21, 2021 and despite multiple requests to the landlord for repairs, the repairs were not undertaken.

On April 29, 2021, the tenants filed an Application for Dispute Resolution under the Act to compel the landlord to make emergency repairs to the rental unit and for the recovery of the filing fee.

On June 8, 2021, an arbitrator ordered the landlord to make all necessary repairs to the rental unit no later than July 31, 2021. The landlord failed to comply with the order of the Director.

I assign significant persuasive weight to the current property manager's testimony about the uninhabitability of the rental unit by October 2021.

I assign significant persuasive weight to the tenant's affirmed and uncontested testimony, written submissions, and photos showing the state of disrepair in the rental unit that worsened through the months.

I accept as fact the tenant's description of the inconvenience caused by the disrepair, the effect the disrepair had on the tenant's ability to use and enjoy his bedroom as his private space, and his increased worry and anxiety over the worsening leak.

I find the landlord breached section 32 of the Act by failing to maintain the residential property in a state of decoration and repair that complied with housing standards thereby making it unsuitable for occupation by the tenants. Flowing from the landlord's failure to meet their obligations under section 32, the tenants' right to quiet enjoyment, free from unreasonable disturbance, pursuant to section 22 was contravened.

Based on the evidence before me, I find the tenants did suffer a reduction in their tenancy; however, on a balance of probabilities, I find the tenants failed to prove that they suffered a 50% reduction in their tenancy between April 1 and June 8, 2021.

Considering the circumstances above mentioned, I find that an appropriate loss in the value of the tenancy resulting from the landlord's breaches of sections 32 and 22 of the Act is 25% of rent paid between April 1, 2021 and June 7, 2021.

On June 8, 2021, an arbitrator ordered emergency repairs to the rental unit. The landlord's affirmed testimony at the hearing committed to starting the repairs within three weeks of the hearing and completing the repairs no later than July 31, 2021. To give effect to the agreement, the arbitrator ordered "the Landlord to make all necessary repairs to the rental unit no later than July 31, 2021". Repairs were not started within the three weeks and were not completed by July 31, 2021, as ordered.

Thus, compounding breaches to s. 32 and s. 22 of the Act, is the failure to comply with an order of the Director. Further, the leak worsened spreading into other areas of the tenants' rental unit making the rental unit uninhabitable.

Taking into careful consideration all the oral testimony and documentary evidence presented before me and applying the law to the facts, I find on a balance of probabilities that the tenants have suffered an additional reduction in the tenancy of a further 25% to the amount of 50% of rent paid between June 8, 2021 and October 18, 2021.

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in the tenants' favour in the amount of **\$4744.39**. The calculations are as follows:

Month	Percentage	Rent Reduction \$	Running Total
April 2021	25%	\$425.00	\$ 425.00
May 2021	25%	\$425.00	\$ 850.00
June 1-7 2021	25%	\$ 99.17	\$ 949.17
June 8-30 2021	50%	\$651.57	\$1600.74
July 2021	50%	\$850.00	\$2450.74
August 2021	50%	\$850.00	\$3300.74
September 2021	50%	\$850.00	\$4150.74
October 1-18, 2021	50%	\$493.55	\$4644.39

Pursuant to section 72(1) of the Act, as the tenants has been successful in the application, they may recover their filing fee of \$100.00 from the landlord.

In summary, the tenants are awarded \$4644.39 for the reduction in value of the tenancy agreement and \$100.00 for the return of the filing fee, totaling \$4744.39.

I authorize the tenants to reduce their monthly rent payment by 50% until the total award is cleared.

Conclusion

Pursuant to sections 67 and 72 of the Act, I authorize the tenants to reduce their monthly rent payment by 50% until the total award of \$4744.39 is cleared.

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: March 16, 2022

Residential Tenancy Branch