



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, LRE, LAT, RP, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- a reduction in monthly rent;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- authorization to change the locks to the rental unit;
- an order requiring the landlord to make repairs to the rental unit;
- compensation for a monetary loss or other money owed; and
- to recover the cost of the filing fee.

The tenants, the landlord RT, and the landlord's legal counsel (counsel) 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. This is pursuant to the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11.

Both parties affirmed they were not recording the hearing.

Thereafter all 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 -

#1 Evidence –

The landlord confirmed serving their evidence by email, which was not a method approved by the tenants to serve documents. As a result, I have declined to consider the landlord's documentary evidence. The landlord and counsel were given the opportunity to present oral evidence and make submissions.

#2 Jurisdictional limit –

Section 58 (2) states that the Director must not determine a dispute if the amount claimed for debt or damages is more than the monetary limit for claims under the *Small Claims Act*, which currently is \$35,000.

As the tenants' original monetary claim of \$41,900 and their amended monetary claim of \$54,960.79 exceeded the amount of \$35,000, I decline to hear the monetary claim due to lack of jurisdiction.

#3 Director's decision –

Section 77 (1) (d) of the Act states that a Decision must be given within 30 days after the proceedings conclude. Section 77 (2) states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if the decision is given after the 30 day period.

#4 Previous common issue –

The evidence is that these parties were in an earlier dispute resolution on the tenants' two applications. One of the issues being heard by another arbitrator was the tenants' request for an order suspending or setting conditions on the landlord's right to enter the rental unit. The hearing on those two applications began on September 20, 2021, continued on January 20, 2022, and concluded on February 22, 2022.

As this matter is being addressed by another arbitrator, I dismiss without leave to reapply the tenants' request for an order restricting the landlords' right to enter the rental unit, as the matter would now be *res judicata*.

As to the remaining issues in the tenants' application, a reduction in monthly rent and authorization to change the locks to the rental unit, I dismiss those claims, with leave to reapply. I determined that these issues were not sufficiently related to the primary issue for an order that the landlord make repairs.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to make necessary repairs to the rental unit and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on March 1, 2020, monthly rent is \$2,100, and the tenants paid a security deposit of \$1,050 and pet damage deposit of \$1,050 to the landlords, according to the written tenancy agreement filed in evidence.

The matter of the tenants' request for repairs was addressed in this hearing.

As to the repairs, the tenant agreed that some repairs have been made and the only remaining repairs at issue were regarding the stove, the fence, and the bi-fold doors.

The tenant submitted that although the faucet has now been repaired, the parties were discussing that matter through emails for 11 months.

The tenants' relevant evidence included numerous emails exchanged between the parties and photographs of the matters of concern of the tenants, including the fence, faucet and stove/oven.

Stove –

As to the stove repair request, the tenant said that the stove is missing an oven rack, the drawer is sticking, and that 2 burners burn extremely hot.

The landlord submitted that the issue with the stove was never brought up until May or June 2021. The landlord submitted that he asked if the elements were working and there was no reply from the tenants. The landlord submitted that this was the first time he was hearing that the elements were not working. The landlord submitted he was happy to send a technician, but there was no response from the tenant.

The landlord said that he was aware that the drawer was sticking, but asserted the stove was functioning properly.

Fence –

As to the fence, the tenant submitted that the fence was unsafe and broken, a fence post was broken, and some posts are rotted out completely. The tenant submitted that the fence is in a state that it could easily be blown down.

The tenant submitted that it is not safe for his children to play in the yard.

The landlord denied the fence was a danger to anyone and the children could safely play in the yard. The landlord said that the fence was leaning away from the yard only 10° on the back property line because of a rotted fence post. The landlord said that the fence on the west property line required repairs and that he made the repairs.

The landlord submitted that the fence did not represent a danger to the public.

The landlord said that he planned on getting the suspect posts and panels repaired/replaced when weather permitted.

Bi-fold doors –

As to the bi-fold doors, the tenant submitted that the hardware is missing from the doors. The tenant said the doors in question were the closet doors in the small bedrooms and front entrance.

The landlord said that the repair requests of the tenants have always been addressed as soon as he heard about them.

Counsel submitted that there seems to always be an ongoing issue with the tenants allowing entry and access to tradespersons to the rental unit.

Counsel submitted that the landlord is committed to making any necessary repairs.

Tenant's rebuttal –

The tenant submitted it took 11 months of emails before the repair was made. The tenant submitted that there were only a couple of times he did not allow a tradespersons, as he was not given sufficient notice.

The tenant submitted their email evidence showed that bifold door was mentioned to the landlord.

The tenant said that the fence is worse that the landlord is making it out to be as the fence is ready to collapse.

The tenant submitted that the landlord said he would replace the stove.

Surrebuttal of landlord –

The landlord said that March 13, 2020 was the time of the shut-down due to Covid and he tried to respect the bubbles of the tenants.

The landlord said that while the fence is leaning, it does not pose a threat to anyone's safety or it would have been replaced immediately.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 32 of the *Act* requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch Policy Guideline 1 states that at the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a

reasonable state of repair and that the landlord is generally responsible for major projects, such as tree cutting.

In this case, the only remaining repairs which were still at issue dealt with the stove/oven, the bi-fold door hardware, and the fence.

In the circumstances before me, I find that the tenants have provided sufficient evidence to show that the stove/oven is in need of repairs and a replacement part. I find a reasonable and common use of an oven is to use two oven racks at any given time and in this case, the evidence shows that the oven has only one rack. Additionally, I find the photographic evidence shows the bottom, warming door is gaping open, and potentially is a safety risk.

What is less obvious is the tenants' assertion that two of the burners are not functioning properly.

I have reviewed the evidence submitted by the tenants under this request is an email of October 16, 2021, which is the first email that I could determine dealt with the stove/oven issue. The tenant wrote, "heats uneventful".

As to the fence issue, I find the tenants submitted insufficient evidence to show that the fence was a safety issue. While the tenants' photographs show a rotting post, I find this evidence did not fully illustrate the entirety of the condition of the fence, or that it was unsafe.

The landlord has acknowledged that the fence needs to be, and will be, addressed as soon as weather permits.

I find the landlord did not dispute the bi-fold doors lack the hardware.

For the above reasons, I find the tenants submitted insufficient evidence that the landlord must make necessary repairs.

I order the landlord to replace the missing oven rack, repair the bottom, warming door, and properly investigate the tenants' complaints that the burners are not functioning properly by April 15, 2022. If it is determined that the burners are not heating correctly, I order the landlord to make that repair within one (1) week after the matter was determined, depending on availability of parts.

As to the matter of the fence, I find it reasonable to conclude that weather is no longer a factor in repairing the fence. I therefore order that the landlord replace any fence post that has become rotten and replace the panels that are in need of replacement, by April 15, 2022.

As to the hardware on the bi-fold doors, I order the landlord to install the missing hardware by April 15, 2022, depending on availability of parts.

Should the landlord fail to fully repair, replace or otherwise comply with these orders, the tenants are at liberty to file another application for dispute resolution and seek an order reducing their monthly rent until such repair, replacement or investigation of the burners, in their entirety, has been completed.

As the landlord is under a deadline to make the necessary repairs, I order the tenants to cooperate fully with allowing the landlord reasonable access to make such repairs, which in these instances, may mean the tenants not require the landlord to provide sufficient notice of entry so that the repairs can be timely made.

As the tenants' application had some success, I grant the tenants recovery of their filing fee of \$100 and direct them to retain \$100 from a future month's rent payment to satisfy this monetary award. The tenants should inform the landlords when making this deduction.

I note that I have made the repair orders conditional depending on availability of parts, due to the commonly known supply chain issues from Covid, availability of contractors, and other reasons. If this turns out to be the case, the landlord must be able to demonstrate that they are making all efforts to comply with the repair/replacement orders.

Conclusion

The portion of the tenants' application seeking an order that the landlord make necessary repairs to the rental unit has been granted under the terms noted above.

The tenants have been granted recovery of their filing fee.

The tenants' monetary claim of \$41,900 and their amended monetary claim of \$54,960.79 has been declined as I have no jurisdiction to consider a claim exceeding the amount of \$35,000.

The tenants' request for an order suspending or setting conditions on the landlord's right to enter the rental unit is dismissed without leave to reapply as this matter is now *res judicata*.

The tenants' request for a reduction in monthly rent and authorization to change the locks to the rental unit are dismissed, with leave to reapply.

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(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 18, 2022

Residential Tenancy Branch