



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, FFT

Introduction

The Tenants apply for the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for a rent reduction pursuant to s. 65 for repairs, services, or facilities agreed upon but not provided;
- An order for repairs to the rental unit pursuant to s. 32; and
- Return of their filing fee pursuant to s. 72.

C.F. and A.G. appeared as Tenants. B.T. appeared as Landlord and was represented by his counsel, M.D..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

C.F. advises that the Landlord was served with the Notice of Dispute Resolution and evidence by way of registered mail. Landlord’s counsel acknowledges receipt of the Tenants’ application materials. I find that the Notice of Dispute Resolution and the Tenants’ evidence was served in accordance with s. 89 of the *Act* and received by the Landlord as acknowledged by counsel.

Landlord’s counsel advises that the Tenants were served with responding evidence by way of personal service via process server on April 28, 2022. The Tenants at first questioned their receipt of the Landlord’s evidence, then acknowledged receiving it as described by counsel. I find that the Landlord’s responding evidence was personally served on the Tenants in accordance with s. 89 of the *Act* and was received by the Tenants as acknowledged at the hearing.

Issue(s) to be Decided

- 1) Are the Tenants entitled to a rent reduction for repairs or loss of service or facilities?
- 2) Should the Landlord be ordered to undertake repairs to the rental unit?
- 3) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on September 1, 2021.
- Rent of \$2,200.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$1,100.00 in trust for the Tenants.

A copy of the written tenancy agreement was put into evidence by the Tenants.

The Tenants described a number of repair issues that they say have existed for the entirety of their tenancy. At the hearing, the Tenants indicate that the dishwasher, dryer and washing machine are not working properly. I am told the dryer is a fire hazard but functional. The oven is functional but does not get up to temperature quickly. The dishwasher ceased functioning in February 2021. They indicate that there is no bathroom ceiling fan. The Tenants say a screen door needs to be repaired and that the floors and counter are separating. They further advise that the hot water tank is not working properly and is intermittently hot. Further mention was made that the windows do not open, and that the sidewalk is broken.

I am told by C.F. that the plumbing for the rental unit is of a substandard material that is prone to leaking. C.F. further advises that the plumbing is in fact leaking into the crawlspace. When asked if the Tenants have observed water leaks or damage within the rental unit, C.F. indicate that he learnt of the water leaking into the crawlspace after being advised of such by a home inspector that attended the property in relation to a potential sale of the residential property by the Landlord. No copy of the inspection report was put into evidence, the home inspector was unnamed by the Tenant, and no

statement provided by the home inspector on his or her observation that there were water leaks in the crawlspace.

A copy of the move-in condition inspection report, conducted on August 28, 2021, was put into evidence by the Tenants. The appliances are described as being in good condition, though the dishwasher is noted as being loose and the dryer is described as turning off randomly. The Tenants argue that many of the repair complaints are not reflected in the move-in condition inspection report as they had not been discovered prior to them moving into the rental unit.

The Tenants indicate that they have raised the repair issues with the Landlord on several occasions, the first by way of letter dated October 2, 2021. The letter, which was put into evidence, includes various allegations and arguments advanced by the Tenant C.F. against the Landlord, none of which are directly relevant to the Tenant's claims. The letter of October 2, 2021 sets out the following repair issues highlighted by the Tenant C.F., with the following being a direct copy from the letter:

- Kitchen sink faucet replaced – loose/Not functioning correctly
- Hot Water Hazzard! If someone uses water when someone is in the shower, the person in the shower gets burnt with the scalding shower water. It's an immediate temperature change to scalding Hot. Very Dangerous
- 2 - Living Room windows repaired – Unable to open/frozen closed– Wood Window problem. Safety Concern, Air flow problem and concern.
- Fasten/Install loose dishwasher.
- Holes in the garage door sealed. Heating loss issue.
- Re-fasten upstairs baseboard to the wall.
- Front, back and balcony doors repairs.
 - loose handles and miss-aligned locks need to be repaired.
 - Loose door jam's base plate seal(s) need to be tightened or replaced. Door(s) operation /closing ability hindered/stopped
 - Leaking door seals need to be replaced. Can see the outside light, from inside. Winter?
 - Detached/damaged sliding glass door screens need to be repaired to avoid further damage/function ability.
 - Replace non-functioning bathroom ceiling fan in the main floor bathroom.
 - Furnace ducting cleaned. Ducting is dirty, full of fuzz and dog hair etc. Yearly maintenance.

- Cedars taken down and Privacy fence installed in back yard left-side as advised prior to move-in.

Subsequent correspondence dated November 3, 2021 was sent by the Tenants to the Landlord, allege deficiencies in the rental unit, which I copy from the Tenant's letter:

1. The windows in the living room do not open; they are frozen shut; an emergency safety issue.
2. Doorknobs/locks to the outside of the home (front, back patio and upstairs patio) are all loose.
3. The exterior doors do not close tightly; the threshold and transition mouldings are loose and need replacing- an emergency safety issue.
4. The furnace ducts are dirty; you indicated these were cleaned a few years ago; this is impacting the efficiency of the furnace and our indoor air quality.
5. The gutters are full of debris; these need to be cleaned before winter as with freeze up and snow, they will cause potential water damage. We would like to be informed when work is being done!
6. All sliding screen doors have holes and do not slide properly
7. The weatherstripping is due to be replaced as it is no longer sealing.
8. The dishwasher does not clean the dishes; we have cleaned the dishwasher and have tried all the remedies we have and yet, it still does not work efficiently.
9. The dishwasher is not firmly mounted to the cabinetry.
10. The stove top elements are intermittent in heating up on the stove top. This is an issue that will need to be looked as we need a means to cook our food.
11. The dryer works but only on certain settings; we were told that you already were aware; when will this be looked at.
12. The kitchen and master bath ensuite lights do not turn on at times and flicker at other times. The bulbs you provided have not solved the issue and are not the correct sizes for what is needed.
13. The kitchen faucet does not function properly; leaks and is loose.
14. The hot water; if multiple water items are used at the same time ie. A person is showering and another person uses the toilet, the person in the shower is scalded with burning water; m A Safety issue.
15. There are holes in the garage door
16. There are loose baseboards.
17. The ceiling fan in the 2nd bedroom upstairs does not work;
18. the fan in the bathroom on the main floor only works occasionally.
19. We appreciate that Poly-B is a concern and is in the home; it needs to be taken care of as well.

It appears a handyperson, P., attended the rental unit the fall of 2021. In correspondence written by the Landlord signed December 10, 2021, it indicates P. attended the residential property on November 22 and 23, 2021 to repair many of the issues raised by the Tenants in their correspondence to the Landlord. The Landlord also provides a note in their evidence, which the Tenant C.F. indicates was authored by P.. C.F. argued that the note is proof that P. noted the deficiencies, however the language in the note indicates work had been completed. The Landlord's letter of December 10, 2021 indicates the furnace was cleaned and serviced on September 20, 2021

The note said to be authored by P. indicates that a technician attend the rental unit to evaluate the dishwasher, oven, and dryer. I am told by the Landlord that the appliances are functioning and that the Tenants assertions that they are not is inaccurate. Landlord's counsel suggests the Tenants are overstating matters.

Subsequent correspondence was exchanged in which various deficiencies are again noted by the Tenant. A letter dated February 12, 2022 sent by the Tenants to the Landlord advises that the dishwasher is no longer functioning, that the oven does not function properly nor does the dryer. Correspondence dated March 1, 2022 from the Tenant indicates the bathroom ceiling fan had been removed some three months prior.

The Tenants provide photographs of the appliances at the rental unit.

The Tenants seek a past rent reduction in the amount of \$12,673.00, which they have calculated by multiplying the minimum wage of \$15.65 for three hours per day for each day that the Tenants have occupied the rental unit up until March 19, 2022.

For the Landlord's part, he denies that the issues as described by the Tenant are present at all and notes that repairs have been undertaken by P.. The Landlord further describes how he has ordered a new dryer for the rental unit but that the Tenant refused entry to the rental unit when the delivery people attended the property. The Tenants C.F. deny that entry was refused and indicate that they were not at the rental unit when delivery of the dryer was attempted. I was directed to email correspondence dated April 1 and 2, 2022 between the Tenant C.F. and the Landlord's realtor where they discussed the delivery of the dryer.

Landlord's counsel emphasized that some of the noted deficiencies form part of the common property and are thus not the Landlord's responsibility with respect to repairs.

It was emphasized that the rental unit was not new and that the Tenants were seeking the replacement of items that were not to their liking.

Landlord's counsel objected to the nature of the Tenants' claim, specifically that the Tenants are pivoting their claim at the hearing based on what is stated in the application. It was further argued that the method in which the Tenants calculate their rent reduction claim is improper and that it would amount to a reduction for most of the rent that had been paid since the beginning of the tenancy.

Both parties mention RCMP involvement with this matter, with the Landlord indicating the Tenants called the RCMP on him, though no police file appears to have been opened. However, that is not relevant to the Tenant's claim for repairs and a rent reduction.

Analysis

The Tenants seek orders for repairs to the rental unit and for a rent reduction.

Landlord's counsel raises objection to the Tenants' claim. Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. The Tenants plead their claim as one for rent reduction and repairs under ss. 32 and 65 of the *Act*, however, they describe in their application a loss of quiet enjoyment, stress, anxiety, and the listing of the rental unit for sale by the Landlord. I would describe the Tenants' claims, as described by them in the Notice of Dispute Resolution, as nebulous.

It should be noted that the Tenants are laypeople. The correspondence provided to me by the Tenants and the conduct of the Tenant C.F. at the hearing provide a picture of what I can only describe as a dysfunctional landlord-tenant relationship. This dysfunction and the Tenants' being self-represented helps explain why the application is broadly described as being one that involves a loss of quiet enjoyment.

Landlord's counsel argues that the Tenants are pivoting their claim at the hearing based on what is described in the Notice of Dispute Resolution and that this is a breach in procedural fairness. With respect, I disagree. There is little doubt that the Notice of Dispute Resolution provides an overly broad description of the dispute. However, the claims in the application are clearly advanced as one for repairs and for rent reduction for repairs, services, or facilities that were agreed upon but not provided. Submissions at the hearing were, for the most part, limited to these issues as the interpersonal

dispute between the parties is largely irrelevant based on the application that was before me. I see no breach of procedural fairness in holding the Tenants to their claims under ss. 32 and 65 of the *Act* as doing so is a clear application of Rule 2.2 of the Rules of Procedure.

Section 32(1) of the *Act* imposes an obligation on a landlord to maintain a residential property in 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, make it suitable for occupation for a tenant. Section 32(1) of the *Act* does not impose an obligation on the Landlord to provide a rental unit that is in perfect condition. As this is the Tenant's claim, they bear the burden of proving on a balance of probabilities that the Landlord's breached their obligations under s. 32(1) after being notified of the repair.

The Tenants advance a laundry list of repair issues that they say have gone unaddressed by the Landlord. When asked at the hearing whether there were any other repair issues the Tenants wished to raise, C.F. concluded by saying that what he had described was a start. As noted above, this landlord-tenant relationship is one that I find to be dysfunctional. The correspondence provided by the parties indicate that C.F. is argumentative and combative, not only with the Landlord, but also the Landlord's realtor, the strata council, and P., the repairperson. The Landlord provided correspondence that indicates that P. has requested that C.F. no longer contact him. Based on the submissions at the hearing and the correspondence, it appears that the RCMP were called by the Tenants.

At the hearing, the Tenant C.F. was argumentative. I provided the Tenants an opportunity to cross-examine the Landlord, though I ended the cross-examination after Landlord's counsel objected, indicating that it was abusive. I agreed and found that the Tenant C.F. was abusing the process, was arguing with the Landlord, badgering his answers, and editorializing to an excessive extent during the cross-examination. After the hearing was concluded and submission closed, the Tenant C.F. attempted to make further submissions despite my indicating the hearing was over.

I provide this context because I find that the Tenants description of the repair issues, in particular C.F.'s, to be overstated. The Tenants conflict with the Landlord has coloured their view of the issues to the extent that I cannot rely on it to be objective.

The Tenants provide the move-in condition report, which does not highlight any of the issues alleged by the Tenants in their letter of October 2, 2021 that was sent a little over a month into the tenancy. Various cosmetic issues are noted with respect to the condition of the rental unit, including scratches and nail holes. Two dents are noted as being present on refrigerator, though it is marked as being in good condition. The kitchen tap is listed as being loose, though again it is listed as being in a good condition but being damaged. The dishwasher is listed as being loose, though again in good condition. No deficiencies are noted for the oven and it, again, is described as being in good condition. The bathroom fans are listed as functional, albeit dirty. The washer is listed as being in good condition and the dryer is said to turn on/off randomly.

The Tenants argued at the hearing that the deficiencies were only discovered upon taking possession of the rental unit. However, s. 21 of the Regulations sets out that a condition inspection report completed in accordance with the *Act* and the Regulations is evidence of the state of repair and condition of the rental unit on the date of the inspection unless there is a preponderance of evidence to the contrary. The Tenant has provided no evidence to support the proposition that the move-in condition is somehow incorrect when it was completed on August 28, 2021. I place significant weight on the condition inspection report as reflecting the state of the rental unit and its appliances at the beginning of the tenancy.

I find that many of the aspects of the repairs requested by the Tenants in their correspondence of October 2, 2021 and November 3, 2021 are of a cosmetic nature. Section 32(1) of the *Act* does not impose an obligation on a landlord to provide a rental unit in perfect condition, only that the state of repair and decoration that complies with the health, safety and housing standards and be fit for occupation having regard to the age, character, and location of the rental unit. The Landlord indicates that the rental unit is not new and the Tenant is seeking for replacement of older items with new items. I find that the Landlord's argument in this regard is particularly apt given the description of the rental unit at the beginning of the tenancy in the move-in condition report.

Despite this, I find that the Landlord has attempted, to the best of his ability, to address the Tenants concerns raised in the correspondence dated October 2, 2021 and November 3, 2021. It is not disputed that P. attended the rental unit in the fall of 2021. The note provided by the Landlord and said to be authored by P. verifies what the Landlord themselves stated in their letter of December 10, 2021, that the various cosmetic issues were repaired by P. in November 2021.

Given my finding that the Tenants testimony is unreliable, I have great difficulty determining what, if any, repair issues are present. The Tenants provide various correspondence that they sent to the Landlord respecting the repair requests. However, this correspondence is not proof that the repairs are needed and simply proof that the Tenants requested them. They reflect the Tenants opinions that repairs are needed and not that the repairs are, in fact, necessary. The photographs provided of the appliances provides no clarity if the items are non-functional or require repairs.

Looking at the move-in condition report and P.'s note, the dryer's timer is noted as being problematic. The issue of the dryer is moot to the extent that the Landlord has purchased a replacement. I have reviewed the correspondence between the Tenants and the Landlord's realtor where the delivery of the dryer was discussed. There appears to be some miscommunication between the two and the Tenant C.F. is, inexplicably, argumentative with the realtor. Based on the correspondence I have reviewed, it does not appear that access was denied and indicates the Tenants were not present at the rental unit. It would appear the dryer's delivery fell victim to the parties' dysfunctional relationship. To the extent that it this should be necessary, I would encourage the parties to arrange a time for its delivery and, barring that, the Landlord make use of s. 29 of the *Act*. Should the Tenants refuse access upon doing so, that issue may be addressed afterwards.

I find that P.'s recommendation that a technician see to the oven and the dishwasher would be appropriate under the circumstances. Indeed, the P's recommendation appears to be appropriate insofar as the Landlord himself elected to replace the dryer, which was noted as requiring service by P. in November 2021. The Landlord indicated at the hearing that all the appliances were in working order. However, the Tenants have been consistent that these two appliances have not been functioning properly for some time. It would appear the dishwasher may not be functional at all since February 2022, though I cannot make this determination given the Tenants tendency to hyperbolize the issues. I was not told by either party that a technician that has been hired by the Landlord to see to the dishwasher and the oven were in working order.

I note that Policy Guideline #1 clearly sets out that maintenance of appliances provided as part of the tenancy is the responsibility of the landlord if damage was not caused by the deliberate actions or neglect of the tenant. Given this and the recommendations made by P., I order that the Landlord hire a technician to see to the dishwasher and oven and undertake any repairs that may be necessary.

With respect to the balance of the repairs requested by the Tenants, I am unable to make a determination by reference to objective third-party evidence that any of the repairs are, in fact, necessary. The Tenants mention poly-B piping, which is discussed by the Landlord in his letter of December 10, 2021. The Tenant C.F. indicates that he learnt that there was leaking in the crawlspace from a home inspector that attended the house. However, he provides no photographs verifying this, no statement from the inspector, no copy of the inspection report, nor do the Tenants provide direct evidence in the form of observations. I accept that the plumbing may have been made of a material that has since been deemed to be substandard and prone to leaking. However, it does not follow leaks are present. Section 32(1) (or s. 33) of the *Act* do not impose an obligation to repair plumbing that is in working order but faces a greater risk of failure. It may be prudent to do so as an owner, however, the *Act* does not oblige it.

At the hearing, the Tenants advised that the hot water tank was not working. However, in the correspondence they provided, it appears to be working but that the water that is too hot. I cannot make a finding that the hot water tank is in need of based on the evidence before me. Other aspects of the Tenants claim, such as the sidewalk or the gutters, form part of the common property for the strata and are not the Landlord's responsibility. The bathroom ceiling exhaust fan is said to have been removed. However, that is not noted in the move-in condition inspection report, P.'s note, nor has the Tenant provide a photograph showing that the ceiling exhaust fan is missing. There is similarly no evidence to support the washing machine is not working.

Finally, dealing with the living room windows not opening or a broken screen door, s. 32(1) does not impose an obligation on the Landlord to repair either of these items. Even if I were to accept they were broken, which I am unable to do, it is not clear to me how a broken screen door would render the rental unit unfit for occupation by a tenant. Similarly, I was referred to no building code requirements that the living room windows be required to open.

It is the Tenants claim and they bear the burden of proving it. I find that with respect to the balance of the alleged deficiencies the Tenants have failed to discharge their evidentiary burden. Accordingly, the balance of their claims for repairs to the rental unit are dismissed without leave to reapply.

Finally, dealing with the Tenants' claim for a rent reduction, I agree with Landlord's counsel that the method in which the Tenants valued their rent reduction claim is improper. Rent reduction claims under s. 65 are determined based on the loss of a

facility or service to be provided under the tenancy agreement and the corresponding loss of value to the tenancy after the facility and service was removed. The Tenants' claim for past rent reduction would amount to nearly wiping out the entirety of their rent obligations under the tenancy agreement. I do not find that this method is appropriate.

Most significantly, however, is that I am unable to determine what, if any, services or facilities have been withdrawn or require repair through the course of the tenancy. Policy Guideline 22 provides guidance with respect to claims for rent reduction, stating the following:

D. BURDEN OF PROOF

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.

There are six issues which must be addressed by the landlord and tenant.

- Whether it is a service or facility asset out in Section 1 of the Legislation;
- Whether the service or facility has been terminated or restricted;
- Whether the provision of the service or facility is a material term of the tenancy agreement;
- Whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
- Whether the landlord gave notice in the approved form; and
- Whether the rent reduction reflects the reduction in the value of the tenancy.

None of these points were addressed by the Tenants in their submissions or in their materials. Further, I am unable to make findings that any service or facility, as defined by s. 1 of the *Act*, has either been restricted or removed. I have conflicting evidence whether the appliances mentioned above, being the dryer, dishwasher, and oven, are non-functional or have been removed. Again, I cannot make a finding that this is so based strictly on the Tenants submissions as they are not reliably objective. The Landlord says the appliances are functioning. Given the conflicting evidence before, I cannot make a finding with respect to this point.

It is the Tenants' claim and they bear the burden of proving it. I find that they have failed to do so and dismiss their claim for a rent reduction without leave to reapply.

Conclusion

Pursuant to s. 32(1) of the *Act*, I order that the Landlord retain a technician for the dishwasher and oven and undertake any repairs that may be advised. The balance of the Tenants' claim for repairs are dismissed without leave to reapply.

The Tenants have failed to establish they are entitled to a claim for a rent reduction. This claim is also dismissed without leave to reapply.

As the Tenants were largely unsuccessful in their application, I find that they are not entitled to the return of their filing fee. Their claim under s. 72(1) of the *Act* is dismissed without 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*.

Dated: May 13, 2022

Residential Tenancy Branch