



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RHOME PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, MNRT, PSF, RP, OLC, FFT

Introduction

On January 30, 2022, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a Monetary Order for compensation for emergency repairs pursuant to Section 33 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 17, 2022, the Tenants amended their Application for Dispute Resolution seeking to increase the amount of compensation pursuant to Section 67 of the *Act*.

This Application was originally set down for a hearing on April 11, 2022 at 11:00 AM, but was subsequently adjourned for reasons set forth in the Interim Decision dated April 13, 2022. This Application was then set down for a final, reconvened hearing on May 24, 2022 at 9:30 AM.

Tenant S.L. attended the final, reconvened hearing. D.T., and K.K. attended the hearing as agents for the Landlords. K.W. and J.F. attended the hearing Landlord/owners as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

K.K. advised of the correct name of the property management company, and this was amended on the first page of the Decision.

Service of documents was discussed at the original hearing. As per the Interim Decision dated April 13, 2022, I have accepted the Tenants' evidence and will consider it when rendering this Decision. However, as the Landlords' evidence was not served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a repair Order?
- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on November 1, 2021, that rent was established at \$2,750.00 per month, and that it was due on the first day of each month. A security deposit of \$1,375.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

At the original hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. In addition, the Tenants were advised that the hearing was scheduled for an hour, and it would not be possible to address every claim in their Application. As such, the Tenants were asked to identify which issue was the most pressing and after much deliberation, they eventually then settled on eight issues.

At the original hearing, Tenant N.L. advised that there was a flood in the rental unit and that the Landlords brought in a restoration company to deal with it. He stated that this company highly suggested that a mould test be completed; however, the Landlords

dismissed this company instead. It is the Tenants' position that a mould inspection is necessary as they can smell mildew.

Tenant S.L. advised that there was a flood that occurred in the rental unit on November 2, 2021 because a hose on the washing machine was loose. She stated that after they contacted the Landlords about his flood, a restoration company was brought in. She submitted that an insurance company conducted an investigation, and it was determined that the washing machine was jarred forcefully. She suggested that this was likely done by the Landlords' contractors prior to the tenancy commencing.

She confirmed that the restoration company stated that a mould test was necessary due to the amount of water, and that this company was dismissed by the Landlords the next day. She stated that they have also paid for an asbestos test because it was suggested by the restoration company that any remediation of the flooding would possibly require the walls to be replaced, and that asbestos might be present. She testified that after dismissing the restoration company, two acquaintances of the Landlords brought in two fans and left them there for two weeks. These same people then took the fans away and nothing else was done since.

In addition, she stated that when the move-in inspection was conducted, the dryer vent fell down and was thus exhausting air into the ceiling. She suggested that this would add moisture into the rental unit and that the smell of mould was strong at the start of the tenancy.

N.L. confirmed that the restoration company brought in fans and conducted a moisture test the next day. They referenced their documentary evidence to support their submissions.

D.T. confirmed that the flood was caused by a loose hose in the washing machine, but he advised that the owners did not have any contractors push or move the washing machine. However, he did not have any position on who was responsible for the flood. He confirmed that a restoration company was brought in immediately and that an insurance inspector investigated the damage on November 2, 2021, but the owners declined to pursue an insurance claim. He stated that the restoration company did not provide a report for the estimation of damages, but this company did make mention of an asbestos test being necessary to ensure the safety of their staff.

He testified that the owners elected to dismiss the restoration company on or around November 2, 2021, because the owners had their own plan to deal with the flooding aftermath. He stated that the washing machine was fixed, that J.F. brought in fans and dehumidifiers on November 3, 2021, and that this equipment was removed after two weeks when they determined that the rental unit was dry because they did not see the presence of water anymore. He acknowledged that the Tenants asked that a mould test be conducted; however, he stated that the owners determined that they considered that the flooding issue was adequately dealt with, so they refused this request.

He confirmed that there was a significant amount of water in the downstairs living room and bedrooms and that it warranted the services of a restoration company as he could see from the pictures provided to him by the Tenants that a “considerable amount of water was coming through the floor.” As well, he acknowledged that the owners did not have any professional qualifications to assess or remediate flood damage. He stated that as the owners did not repair or replace any drywall, it was not necessary to conduct an asbestos test.

The original hearing concluded at this point.

At the reconvened hearing, S.L. reiterated that a mould test needs to be completed as the downstairs area of the rental unit smells of mould and mildew. In addition, she stated that the insurance company indicated that any flooding issue needs to be dealt with properly as mould could develop within 48 hours. She submitted that they are all ill and suffering from respiratory issues.

After some unsuccessful attempts at settling these matters, S.L. then advised that the only other issue she wanted to make submissions on was regarding some electrical problems in the rental unit. She stated that she brought in a professional electrician that examined the fuse box and shook his head because it was approximate 50 years old and was never inspected. She testified that there were no electrical permits acquired for any of the work completed, that there was a problem with the pot lights, that the electrical system is overloaded, that the breakers constantly trip, that there are nails touching live wires, that there are fixtures with loose wires hanging down, and that these are all fire hazards. She referenced the documentary evidence submitted to support this position.

K.W. advised that it is his belief that a mould test is not required. Regarding the electrical issues, he confirmed that he would address these concerns as his son would be bringing in an electrician to address them.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of evidence before me, it is undisputed that there was a flood in the rental unit, and it does not appear as if it was as a result of the Tenants' negligence. Furthermore, the flooding was significant enough that it required that a restoration company be called in to assess the damage. While there are opposing arguments about the necessity of a mould test, I am satisfied from the evidence provided that the amount of water that entered the rental unit was substantial. Given that there is no evidence that the owners had any professional qualifications in flood assessment and/or remediation, it is not clear to me why they elected to dismiss the restoration company and manage the issue themselves.

As there was no evidence provided that they had any expertise in remediating this flooding issue properly, I do not accept that their assessment of there being no visible water after two weeks to have adequately addressed this problem. I find it reasonable to conclude that the steps that they took to attend to this matter could have only addressed a superficial aspect of this flood and that it is possible that there could be unseen aspects of this flood damage that have been left unaddressed. As I am not satisfied that the owners had any qualifications to sufficiently assess all the potential consequences from a flood, I find it reasonable to have reservations that this issue was rectified satisfactorily.

As such, I **Order** that the Landlords hire a qualified professional, to investigate and assess the area that was affected by the flood, within two weeks of being deemed to receive this Decision.

As a note, the Tenants may serve a copy of this Decision to the Landlords, in a manner in accordance with the *Act*, to expedite receipt of this Decision, and consequently the start of the repair Order.

I further **Order** that the Landlords have any necessary repairs commence, by a qualified professional, within two weeks of receiving the assessment/recommendation of any required repairs. This should include the completion of a mould test should the qualified professional deem it necessary as part of the repairs.

The Landlord is cautioned that failure to comply with the above noted **Orders** could lead to justification in a Tenants' Application for compensation. Furthermore, should the qualified professional determine that an asbestos test is necessary as a part of the required remediation or repairs, the Tenants may **withhold the cost of the tests already paid for** from the next month's rent. However, only the costs of the tests may be withheld. The Tenants are not entitled to withhold any amounts for travel time, gas, delivery fees, or anything else that was in addition to the cost of the tests. The Tenants must present the invoices to the Landlords to prove this amount.

With respect to the Tenants' submissions about the electrical issues, I find it important to note that similar to the concerns raised at the original hearing, S.L. would provide some relevant testimony to the pertinent issues, but would then deviate to unrelated concerns and other problems that she had with respect to the rental unit. It was difficult to keep her focussed on relevant issues, and this demeanour is reflected in the abundance of unorganized and haphazard evidence that addressed a host of issues directed at the Landlords. In addition, it was difficult to ascertain all the exact concerns the Tenants had with the electrical issues specifically. Given that the owners have acknowledged that they were addressing the electrical issues that were brought to their attention, it is not clear what has been corrected and what is still allegedly in need of repair. As such, I dismiss this claim with leave to reapply should any of the alleged issues not be corrected by the owners.

As the Tenants were partially successful in these claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to **withhold this amount** from the next month's rent in satisfaction of this claim.

Conclusion

Based on above, I **Order** that the Landlords complete the following actions:

- As soon as is reasonably possible, and within two weeks of being deemed to have received this Decision, the Landlords must hire a qualified professional to investigate and assess the area that was affected by the flood.
- As soon as is reasonably possible, and within two weeks of receiving the qualified professional's assessment/recommendation, the Landlords must have any necessary repairs commence.
- Any required repairs must be fully completed within a reasonable period of time after the work commences.

The rest of the Tenants' claims in this Application, that were not addressed above, 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*.

Dated: June 15, 2022

Residential Tenancy Branch