



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order requiring the landlord to carry out repairs, pursuant to section 32; and
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing. The landlord was represented by property manager NH (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service

The tenant served the notice of hearing and the evidence (the materials) via registered mail in April 2022. The landlord confirmed receipt of the materials. Based on the testimony of both parties, I find the tenant served the materials in accordance with section 89(1)(c) of the Act.

The landlord served the response evidence via registered mail on June 03, 2022 to the tenant's rental unit. The landlord provided the tracking number (recorded on the cover page of this decision).

The tenant affirmed he did not receive the response evidence. The tenant received a notice from Canada Post but did not go to the post office to receive his mail.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Based on the landlord's convincing testimony and the tracking number, I find the landlord served the response evidence in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the response evidence on June 08, 2022, in accordance with section 90 (a) of the Act.

Preliminary Issue – Partial Settlement

At the hearing both parties agreed to the following binding settlement for the claim for an order requiring the landlord to carry out repairs.

1. The landlord will hire a contractor to investigate odours in the master bedroom by June 17, 2022.
2. The landlord will complete the heat thermostat repair in the master bedroom by September 30, 2022, subject to warm weather.

The application for an order to reduce the rent for repairs, pursuant to section 65, will be adjudicated.

Issue to be Decided

Is the tenant entitled to an order to reduce the rent for repairs?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started on December 01, 2021. Monthly rent is \$1,650.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$825.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenant is seeking a retroactive rent reduction in the amount of \$650.00 per month for the months of March, April and May 2022, as the landlord did not timely repair the windows sills, the master bedroom floor and heat control and a leak in the kitchen.

The tenant rented another rental unit from the same landlord and learned that the current rental unit had a water leak on December 01, 2021. The landlord allowed the tenant to continue to occupy the prior rental unit until December 21, 2021. The landlord stated that he informed the tenant in November 2021 that the current rental unit was going to be painted and during the painting the landlord learned about the water leak due to a roof damage. The landlord hired a contractor to repair the roof and submitted an estimate for roof repair dated November 12, 2021 in the amount of \$4,500.00.

The condition inspection report (the report), signed by both parties, indicates the possession date was December 21, 2021. Both parties agreed the rental unit was in good condition on the possession date and the only repairs needed were to replace the shower head and the living room heat cover.

The tenant asked the landlord to repair the windows sills, as they were deteriorating. The tenant does not remember when he first asked the landlord for this repair. The tenant emailed the landlord on March 27, 2022 and the landlord completed the repairs between May 19 and 26, 2022. The March 27, 2022 email states:

The leak is back dripping in the ceiling and down the wall. I think it is dripping down the wall into the bedroom. Smells really musky and the floor is sinking. Also, can the heat in the bedroom get fixed so it can be shut off? It has not been turned off since I have moved in. I have to sleep with the windows wide open to cool it down. But doing this I hear everybody and everything all day and night. Please fix the problems. Also, rain is coming into the apartment from the bottom of the windows. Thanks.

The landlord testified the windows sills were damaged because of the water leak and he completed the windows sills repair on June 5 or 6, 2022. The landlord could not complete the repairs sooner because the contractor needed to use a ladder to reach the windows and the inclement weather delayed the conclusion of the repair. The tenant said the contractor did not need to use a ladder to repair the windows sills.

The tenant affirmed the contractor left broken pieces of glass in the second bedroom used by his infant daughter. The landlord was very concerned because the contractor did not remove all the pieces of glass from the second bedroom. The tenant stated he cleaned the bedroom on the same day that he noticed the pieces of glasses and he concluded that the bedroom was safe for his daughter.

The tenant asked the landlord to repair the master bedroom floor on December 21, 2021, as it was damaged by the water leak. Later the tenant testified that he believes that he asked the landlord to repair the master bedroom floor a few weeks after he moved in. The landlord completed the repair in May 2022. The tenant could use the master bedroom, but he slept in the second bedroom because of an odour originating from the master bedroom floor. The tenant did not inform the landlord about the odour.

The landlord said the master bedroom damaged floor was at the most 5 or 6 inches long. The landlord was aware of the odour, but not that the tenant was not sleeping in the master bedroom. The tenant removed the damaged floor, and the landlord replaced the entire master bedroom floor.

The tenant did not tell the landlord that after the master bedroom floor was repaired there is still an odour originating from the master bedroom.

The tenant stated the master bedroom heat control is broken and he asked the landlord to repair it after he moved in. When the tenant visited the rental unit the heat for the entire rental unit was turned off. The landlord testified the tenant did not inform him about the master bedroom heat control and he only learned about this issue because a neighbour tenant complained of the heat control in his unit. The landlord hired a contractor to inspect the master bedroom heat control on May 04, 2022.

The landlord said the contractor will repair the heat control by September 30, 2022, as stated in the partial settlement topic of this decision.

The landlord affirmed the roof repair was more complex than expected and the contractor submitted a second estimate on January 10, 2022 in the amount of \$26,500.00. It states: "This job should take 2 days of good weather. Weather channel shows good weather from Friday January 21st, Monday to January 24th. Thank you for giving me the opportunity in giving you this quote." The contractor was not able to complete the roof repair sooner because of inclement weather.

The landlord stated he took all the possible steps to mitigate the tenant's losses due to the repairs. The landlord reduced rent to \$825.00 for January 2022 and \$1,000.00 for February 2022. The landlord testified the notice of hearing is dated April 26, 2022 and the tenant did not suffer a loss for March, April and May 2022. The tenant said he should not have paid rent for January 2022 because of the incomplete repairs.

The tenant affirmed that the rental unit's conditions were not ideal since he moved in, but he is sure that the rental unit's conditions will get better.

Analysis

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 onus to prove the case is on the person making the claim.

Section 65(1) of the Act states:

(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 regulations or a tenancy agreement**, the director may make any of the following orders:

[...]

(b) **that a tenant must deduct an amount from rent to be expended on** maintenance or a repair, or on a service or facility, as ordered by the director;

[...]

(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)

Section 65(1) of the Act should be read in conjunction with sections 7 and 67:

Liability for not complying with this Act or a tenancy agreement

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 reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

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 out 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 tenant claims he suffered a reduction in his tenancy in the amount of \$650.00 per month (39.39% of the total amount of rent) per month for the months of March, April and May 2022 because the landlord did not timely complete four repairs.

Section 32 of the Act states:

(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.

(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Residential Tenancy Branch Policy Guideline 01 states:

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.

Based on the report, I find that when the tenant moved to the rental unit on December 21, 2021 the only repairs needed at the time were the shower head and the living room heat cover.

I find the tenant's testimony was, overall, vague and non-convincing and the landlord's testimony was convincing.

Based on the March 27, 2022 email, I find the tenant informed the landlord on March 27, 2022 that the windows sills needed to be replaced. Based on the landlord's convincing testimony, I find the landlord completed the windows sills repair on June 06, 2022. The tenant did not prove, on a balance of probabilities, that he suffered a substantial loss because of the landlord's delay to conclude the windows sills repair.

Based on the March 27, 2022 email, I find the tenant informed the landlord on March 27, 2022 that the water leak caused damage to the master bedroom floor and the heat control is broken. The tenant did not prove, on a balance of probabilities, that he suffered a substantial loss because of the landlord's delay to repair the master bedroom floor and the heat control. The tenant indicated in the March 27, 2022 email that he could sleep in the master bedroom with the windows open. The tenant did not inform the landlord that he decided to sleep in the second bedroom because of the master bedroom odour. I find that sleeping with the windows open due to a broken heat control is not a substantial loss.

Section 28 of the Act provides that tenants are entitled to quiet enjoyment including the right to freedom from unreasonable disturbance.

The entitlement to quiet enjoyment does not guarantee a tenant the right to absolute silence in their rental unit. Some noise is unavoidable in a multi-unit dwelling, especially in apartment buildings in large cities, such as the rental unit. The tenant did not indicate that the noise level was unbearable.

The tenant did not inform the landlord that the odour continued in the master bedroom after the landlord repaired the floor in May 2022.

Based on the landlord's convincing testimony and the November 12, 2021 and January 10, 2022 estimates, I find the landlord could not complete the repairs of the windows sill

and the master bedroom floor and heat control sooner because of the complexity of the repairs and inclement weather.

The tenant did not provide testimony about the water leak in the kitchen. The landlord offered a 50% rent reduction for January and 39.39% for February 2022 and the tenant only submitted this application on April 06, 2022. The tenant did not explain why he did not submit this application earlier.

Considering the above, I find the tenant failed to prove, on a balance of probabilities, that the landlord breached the Act or the tenancy agreement and that the tenant suffered a substantial loss because of the landlord's delay in completing the repair. I find the tenant suffered minor annoyances and this is not grounds for compensation.

Thus, the tenant is not entitled to an order to reduce the rent for repairs.

Conclusion

I dismiss the tenant's claim 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: June 17, 2022

Residential Tenancy Branch