



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, OLC, FFT

Introduction

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

- An order for repairs to the rental unit pursuant to s. 32;
- An order pursuant to s. 62 that the Landlord comply with the Act, Regulations, and/or the tenancy agreement;
- An order pursuant to s. 65 for a reduction in rent for repairs, services, or facilities agreed upon but not provided; and
- Return of their filing fee pursuant to s. 72.

A.O. and C.O. appeared as Tenants. B.J. appeared as agent for the Landlord.

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.

The matter was adjourned on April 29, 2022 to today’s date as the Tenants had failed to serve their application materials on the Landlord.

At the outset of the hearing, the parties acknowledged receipt of the other’s application materials. Based on the mutual acknowledgement, I find that pursuant to s. 71(2) of the *Act* the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Tenants’ Claim

At the outset of the hearing, the Tenants advised that they had vacated the rental unit in February 2022. This was acknowledged by the Landlord’s agent.

The Tenants' claims under s. 32 (repairs) and 62 (order that the Landlord comply with the *Act*, Regulations, or the tenancy agreement) are only relevant to active tenancies. The tenancy here is over. Thus, the claims under s. 32 and 62 of the *Act* are moot. Accordingly, I dismiss these two claims without leave to reapply.

The hearing proceeded strictly on the issue of the Tenants' past rent reduction claim under s. 65 of the *Act*.

Issues to be Decided

- 1) Are the Tenants entitled to a past rent reduction?
- 2) 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 issues 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 February 26, 2016.
- The Landlord obtained vacant possession of the rental unit in February 2022.
- Rent of \$976 was payable on the first day of each month.
- The Tenants paid a security deposit of \$450.00 and a pet damage deposit of \$458.00.

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

The Tenants indicate that there were various ongoing repair issues at the rental unit throughout the course of their tenancy. I was specifically directed to a letter dated November 25, 2019, which outlined the following issues:

- Dryer ventilation, cleaning, and maintenance.
- Rust hole in bathtub.
- Weeds in the backyard destroying the concrete.
- Closet in the upstairs bedroom.
- Washing machine leak.
- Door not closing properly.
- Batteries in smoke alarms needing replaced.

At the hearing, the Tenants highlighted that the washing machine had been leaking for a period of time prior to the November 2019. They indicate the washing machine was repaired, though could not advise when that occurred. The Tenants emphasized that the Landlord had obtained repair people on numerous occasions but that it took several visits before the washing machine was fixed. The Landlord's agent referred me to several invoices for appliance repair addressing the issues with the appliances.

The Tenants further indicate that there was a hole in the bathroom ceiling that was caused by a leak in the plumbing above it. There was a generalized comment that there was mould within the rental unit. The Tenants provide a photograph of what appears to be mould on the roof, though they made no specific submissions on the circumstances related to this issue. Another photo shows a hole in a roof and drywall on the ground, which would appear to correspond with the plumbing leak.

Finally, the Tenants indicate that the outdoor plug-in was not working, which they discovered during a cold spell in the December 2021. The Tenants say their vehicle would not start one cold morning. The Tenants say that they borrowed the plug from their neighbour, which eventually resulted in a conflict between the Tenants and their neighbour. The Tenants cite this conflict with their neighbour as the reason they vacated the rental unit.

The Landlord's agent indicates that rental unit is a strata within a larger complex. I was advised by the agent that the electrical plug was the responsibility of the strata and that the Landlord notified the strata about the issue in December 2021. The Landlord's agent further advised that the strata obtained an electrician sometime in December 2021 and that the electrical plug was repaired in early January 2022. The Tenants deny that the plug had been repaired and indicate that it was their understanding that the electrical plug was the responsibility of the Landlord.

As stated on their application, the Tenants seeks one-half of month's rent for February 2022 due to the various repair issues they say were unaddressed. It was argued that the continuing repair problems induced them to end the tenancy.

Analysis

The Tenant's seek a rent reduction.

Pursuant to s. 65 of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs.

Section 32 of the *Act* imposes an obligation on landlords 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.

As made clear by Rule 6.6 of the Rules of Procedure, the Tenants bear the burden of proving their claim on a balance of probabilities.

In this instance, the Tenants allege that the Landlord failed to repair the rental unit. However, the Tenants submissions were generalized and lack the specificity that one would normally expect of these types of claims. The generalized nature of the claim is reflected, in my view, in their request for a rent reduction of half a month's rent.

Two issues were primarily highlighted by the Tenant. The first pertained to a washing machine that was leaking some years ago, though the issue was resolved sometime after November 2019. The Tenants admit that the Landlord had retained repair people on multiple occasions to address the issue, a point corroborated by the Landlord's evidence showing various repair receipts. The Tenants were not specific in the dates in which the washing machine was said to be broken. The Tenants did not submit that the washing machine was not working, nor did they make submissions to the extent or nature of the leak.

Based on the evidence provided, I am unable to find that the Landlord breached its obligation under s. 32 of the *Act*. I accept there were requests made by the Tenant to repair the washing machine. However, the Tenants admit that the Landlord retained repair people to address the issue. The repair receipts indicate the washer was repaired and that no leaks were present. Indeed, one indicates a theory of the repair person that the leak may be from a possible overloading of the unit. Further, there are no dates given for which to apply any purported rent reduction for the washing machine, nor would it appear to corroborate to the amount claimed, which relates to the rent in February 2022.

The second issue relates to an exterior electrical plug-in that the Tenants indicate was not working during a cold spell in December 2021. The only evidence I have on this point is the oral testimony of the parties. The Tenants emphasize that it was not working and that it was the Landlord's responsibility to repair it. The Landlord emphasized that the plug-in was the responsibility of the strata and that it was repaired, in any event, in January 2022. There is no evidence to support who is responsible for repairing the exterior plug, be it the Landlord or the strata. As this is the Tenants' claim, they bear the burden of proving the Landlord breached its obligation under s. 32. Under the circumstances, I find that they failed to do so as it is equally plausible that the plug-in repair was the strata's responsibility and that it may well have been repaired in January 2022.

The other aspects were of a generalized nature such that I find the Tenants failed to show that they Landlord breached its obligations under s. 32 at all. The mention of mould was not specific. The hole in the bathroom from a leak would appear to be direct proof that the Landlord accessed the roof to address the leak. I find that the Tenants have failed to establish that the Landlord breached the *Act*, Regulations, or the tenancy agreement such that a rent reduction would be warranted. Accordingly, their claim is dismissed without leave to reapply.

I would finally note that the Tenants advance a claim for ½ a month's rent for February 2022 based on the generalized claim of repair issues throughout the tenancy. That is not how a claim for rent reduction is made. Rent is reduced for the loss of value to the tenancy over the period in which the repair was not undertaken or the service was disrupted. The only aspect of their evidence that appears to correspond with the relevant timeframe would be the claim that the plug-in did not work. As noted above, I find the Tenant's failed to make out their claim that the Landlord breached their obligation under s. 32 with respect to this issue.

Conclusion

The Tenants' claim under s. 65 is dismissed without leave to reapply.

As the Tenants were unsuccessful in their application, I find that they are not entitled to the return of their filing fee. Their claim under s. 72 for their \$100.00 fee 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: July 07, 2022

Residential Tenancy Branch