



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNDCT, RR, OLC, RP, FFT

Introduction

The tenants seek various relief under the *Residential Tenancy Act* (“Act”), which are set out in greater detail below. A dispute resolution hearing was convened on August 11, 2022 and both the tenants and the landlords attended. The parties were affirmed, no service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Are the tenants entitled to compensation?
2. Are the tenants entitled to a reduction in rent (in the amount of \$400.00)?
3. Are the tenants entitled to an order that the landlords comply with the Act, the regulations, or the tenancy agreement?
4. Are the tenants entitled to an order for repairs?
5. Are the tenants entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

In December 2021 there occurred a water leak in two rental units located above the rental unit that is subject to this dispute. Water leaked down into the kitchen and damaged the drywall and the hardwood floors. A restoration company hired by the landlords’ insurance company determined that the leak was caused through no fault of either the tenants or the landlords.

Both parties have insurance. The tenants have tenants’ insurance. They opened a claim in January 2022 and then closed the claim. The tenants do not want to reopen the claim because it would require them to cover a \$500.00 deductible, and, because this is their

first claim within the first two years of their policy, they will have to pay an as-yet-undetermined higher premium on their policy.

The tenants do not believe that it is fair for them to have to pay either the deductible or the potentially higher premiums related to damages (and repairs) that are not their fault. The landlords' insurance will cover the repairs (which are, without going into too much detail, going to be extensive and may require the tenants to vacate the rental unit for 2-3 weeks). The landlords' insurance will not, however, cover the tenants' costs to move their belongings out of the property or for the tenants' temporary accommodations. The repairs have not yet been started.

The particulars for this aspect of the tenants' application read as follows:

\$500 deductible to put through an insurance claim to reside elsewhere during the repairs and have our contents removed. \$1300 (one month rent) 1 month rent free during the month repairs actually start and finish. Landlord verbally stated that our premium would not go up, confirmed by insurance agency that it will go up for years to come. Tenants do not want to have to pay for repairs to take place. Want to reside in unit during the repairs and scope of work should not require vacancy

The next aspect of the tenants' application is a claim to reduce rent (in the amount of \$400.00) as described in the particulars of their application:

\$100 for each month that the flooring has been removed and not repaired. Flooring was removed January 21, 2022 and as of today (May 11/22) floor has not been repaired. 4 months currently with no repairs, \$400 rent reduction total. Landlord was adamant to go with Premium Restoration despite knowing that they had a wait time for repairs. She verbally stated she has used that company in the past which is why she wanted them to do the repairs. Not acting in good faith to get the repairs done

The tenants seek an order that the landlords comply with the Act, the regulations, or the tenancy agreement, and the particulars of this aspect of their application state as follows:

Told landlord that we did not want to be financially responsible for the costs of the repair, moving out and storing our contents elsewhere when this was not our fault. We got stuck in the middle of this situation and she wants us to pay to

assist with completing the repairs. We provided her with different options on how we could all make this work. She told us that we need to voluntarily give her our move out notice and provided move out dates if we do not reopen our claim.

Last, the tenants seek an order for repairs, the particulars of which state:

We asked numerous times over the past 4 months on updates regarding the repairs. We had to follow up with both the landlord and restoration company as our landlord requested to meet with the company at our unit when she knew we would not be there. She failed to provide us with the exact work being done and length of repairs until this week. She also lied to us and removed a cabinet to pick out flooring. She advised at a later time that she was also repairing the cabinet. Not acting in good faith

A photograph of the floor in question was submitted into evidence by the tenants.

The landlords testified that they agree with the tenants' position: neither party is at fault for the leak. However, they dispute the tenants' claim for compensation— "it's wrong"— but the landlords' own deductible is \$1,000.00, and the \$500.00 deductible that the tenants will have to pay is simply "the cost [or price] of doing business."

In respect of the repairs themselves, the landlords testified that the restoration is on hold until the tenants reopen the claim (or, it might appear, "un cancel" the insurance policy). The landlords dispute the tenants' argument that the landlords will somehow benefit from a \$40,000 upgrade, rather, it is repairs that will be done, and not in the amount suggested.

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 their case is on the person making the claim.

1. Are tenants entitled to compensation?

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

What is lacking in the tenants' application for compensation is any proof or evidence of the landlords' not complying with the Act, the regulations, or the tenancy agreement. From the evidence before me, the landlords have engaged their insurer to proceed with repairs. However, due to the tenants' closing or cancelling their claim, the repairs cannot proceed.

I am not persuaded—because there is no evidence—that the landlords have breached the Act such that the tenants have suffered a monetary loss. There is nothing in the particulars for me to find a basis on which the landlords must compensate the tenants. Last, that the tenants' insurance company may increase premiums is entirely outside the control of the landlords.

Taking into consideration all the oral and documentary evidence before me, it is my finding that the tenants have not proven that the landlords have not complied with the Act, the regulations, or the tenancy. Therefore, no compensation may flow. The tenants' claim for compensation is dismissed.

2. Are tenants entitled to reduction in rent?

In respect of this aspect of the tenants' claim, there is no explanation or meaningful quantification as to how an amount of \$100.00 per month was calculated to be the appropriate amount of damages for a reduction of rent application. There was no evidence to suggest that the unrepaired floor is causing a health or safety issue, and there is no evidence that the tenants are unable to use the kitchen.

Taking into consideration the evidence before me, it is my finding that the tenants have not proven, on a balance of probabilities, that they are entitled to a rent reduction. This aspect of their application is dismissed.

3. Are tenants entitled to order that landlords comply with Act

The particulars of this aspect of the tenants' application do not, I conclude, form the basis for the relief being sought. As such, I am unable to consider the tenants' application under this part as full particulars—which must demonstrate a *prima facie* basis from which relief may be sought—are lacking (see section 59(2)(b) of the Act). In short, there is nothing in the landlords' actions that give rise to a finding that they are not complying with the law. As such, this aspect of the tenants' application is dismissed.

As an aside, while the female landlord may well have “told us that we need to voluntarily give her our move out notice and provided move out dates if we do not reopen our claim,” the tenants can simply ignore any such request. If the landlords intend to end the tenancy, they may only do so pursuant to section 44 of the Act or by way of an application under section 49.2 of the Act.

4. Are tenants entitled to an order for repairs?

There is repair work needed to be done. That much is not in dispute. However, it is my understanding that the landlords currently have a dispute resolution hearing before the Residential Tenancy Branch on October 3, 2022. This is in respect of the landlords’ application for which the landlords seek vacant possession of the rental unit to perform renovations or repairs (see Landlord’s file, referenced on cover page of this Decision).

Given the nature of that application, I decline to make an order for repairs. This aspect of the tenants’ application must respectfully be dismissed.

5. Are tenants entitled to recover cost of application filing fee?

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant’s filing fee. In this dispute, as the tenants were not successful in their application this aspect of their claim must be dismissed.

Conclusion

The tenants’ application is hereby dismissed, without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act.

Dated: August 12, 2022

Residential Tenancy Branch