



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants under the *Residential Tenancy Act* (the Act), on June 2, 2022, seeking:

- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlord to complete repairs to the unit, site, or property; and
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement.

The hearing was convened by telephone conference call at 11:00 A.M. on October 14, 2022, and was attended by the Tenants B.D. and S.L. (the Tenants), an occupant of the rental unit C.M. (the Occupant), the Landlord M.S. and the Landlord's spouse R.S. All testimony provided was affirmed. The Tenants stated that the Notice of Dispute Resolution Proceeding (NODRP) was emailed to the Landlord June 14, 2022, the same day it was emailed to them by the Residential Tenancy Branch (Branch). The Landlord acknowledged receipt and stated that they had no concerns with regards to the date or method of service. Based on the above, I am satisfied that the NODRP was deemed served on the Landlord on June 17, 2022, if not earlier received, and find that it was therefore sufficiently served for the purposes of the Act and the Residential Tenancy Branch Rules of Procedure (Rules of Procedure).

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were

also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, a copy of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

In their Application the Tenants sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. As the Tenants stated at the hearing the most important claims were with regards to an order for the Landlord to complete repairs, and a related order for the Landlord to comply with the Act, regulations, or tenancy agreement, the hearing proceeded on those matters. The claim for a rent reduction was dismissed with leave to reapply.

Preliminary Matter #2

The parties acknowledge that none of the documentary evidence before me had been served on the other party as required, for the purpose of the hearing. The parties stated that they thought it was sufficient that the documents had been exchanged during the course of the tenancy.

I advised the parties that the Rules of Procedure are clear that at the hearing the parties must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant or respondent, as applicable, was served with all evidence as required by the Act and the Rules of Procedure. Rules 3.13 and 3.15 of the Rules of Procedure state that where possible, copies of all available evidence should be submitted to the Branch and served on the other party in a single complete package. Rules 3.14 and 3.15 state that the parties must ensure evidence that they intend to rely on at the hearing is served on the

other party and submitted to the Branch as soon as possible, and not later than either 14 days for applicants, or 7 days for respondents.

I find it unreasonable for the parties to have assumed, without forewarning to each other, that they could simply rely at the hearing on any and all documents given to one another, or communications exchanged, throughout the course of the tenancy. I find that allowing the parties to proceed in such a manner would be a significant breach of not only the Rules of Procedure but the principles of natural justice and administrative fairness which dictate that parties must know the case against them and have an opportunity to respond. As a result, I have excluded from consideration, all of the documentary evidence before me. The hearing therefore proceeded based only on the affirmed testimony of the participants.

Settlement

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the Act, I could assist the parties to reach an agreement, which would be documented in my Decision and supporting order(s). During the hearing, the parties mutually agreed to settle some of the claims as follows:

1. The parties agree that the Landlord will have the exterior stair railings re-attached as soon as possible, and not later than one month from the date of the hearing.
2. The parties agree that the Landlord will have the caulking re-done around the kitchen sink and the bathtub faucet as soon as possible, and not later than one month from the date of the hearing.
3. The parties agree that the Landlord will have a qualified professional inspect the kitchen sink and counter as soon as possible, and not later than one month from the date of the hearing, to determine if water has been leaking into/under the counter, and whether there is mould present as a result.
4. The Landlord agrees to complete any necessary repairs or remediations as a result of the above noted inspection as soon as possible after they receive notification from the professional who inspected the sink and counter, that such repairs or remediations are required for health, safety, or use of the rental unit for occupation by a tenant.
5. The parties agree that the Landlord will have a qualified professional inspect the gutters as soon as possible, and not later than two months from the date of the hearing, to determine if they are properly and securely attached and if water has

been leaking or spilling out of the gutters or between the gutters and the fascia. The Landlords agree to complete any necessary repairs or remediations as a result of the above noted inspection as soon as possible after they receive notification from the professional who inspected the gutters, that such repairs or remediations are required to prevent water from either spilling over or leaking/dripping between the fascia and the gutter.

6. The parties agree that the Landlord will have a qualified professional complete all necessary remediations or repairs if a qualified professional would reasonably be expected to be needed to complete such repairs or remediations.

This settlement agreement was reached in accordance with section 63 of the *Act*.

Although the Tenants also sought replacement of the kitchen cabinets, installation of toe kicks in the kitchen under the cabinetry, and repair or replacement of the exterior stairs, a settlement agreement could not be reached between them regarding these matters. As a result, I proceeded with the hearing of these matters and rendered a decision under the authority granted to me by the Director of the Branch under section 9.1(1) of the *Act*.

Issue(s) to be Decided

Are the Tenants entitled to an order for the Landlord to complete repairs to the unit, site, or property?

Background and Evidence

The Tenants and occupant stated that since the start of the tenancy there have been no updates or improvements to the rental unit other than the replacement of a toilet and washer and dryer. The Tenants and occupant stated that the kitchen cupboards are “old and nasty” and that there are no toe kicks under the cabinetry on the floor. The Tenants and occupant also stated that the front and back exterior stairs are separating from the home and sinking or settling into the ground, making them unsafe. As a result, the Tenants requested an order that the Landlord replace the kitchen cabinetry, install toe kicks in the kitchen, and repair or replace the exterior stairs.

The Landlord and their spouse stated that there is nothing wrong with the kitchen cabinetry and they are not willing to replace things that are functioning correctly but simply not to the taste of the Tenants. The Landlord and their spouse stated that there

were no toe kicks under the kitchen cabinetry at the start of the tenancy and they are not willing to install them. The Landlord and their spouse stated that they have told the Tenants numerous times that if they dislike the rental unit, they can move. The Landlord and their spouse denied any knowledge that the exterior stairs are separating from the home and settling or sinking into the ground. However, they stated that if this is the case, and there is a safety issue as a result, they would have them repaired as they want the home to be properly maintained.

Although the parties agreed that a guest of the Tenants had fallen while going down one of the exterior stairs, they disagreed about the reason. The Tenants and occupant argued that it was because the treads of the stairs are different heights due to their sinking/settling, making them hard to use and unsafe. The Landlord stated that they were also present during this incident and the guest was not using the stairs safely or appropriately, causing them to fall.

Analysis

Section 32(1) of the Act states that a landlord must provide and maintain 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, makes it suitable for occupation by a tenant.

Although the Tenants requested the installation of toe kicks in the kitchen, there is no evidence before me that the lack of toe kicks in the kitchen constitutes a breach of section 32(1) of the Act on the part of the Landlord. I am also not satisfied that the Tenants' belief that the kitchen cabinetry is "old and nasty" constitutes a breach of section 32(1) of the Act as the Landlords stated that they function properly, and the Tenants did not deny this fact.

Although landlords have an obligation to repair and maintain a rental unit as set out under section 32(1) of the Act, they are not required by the Act to improve or update the rental unit during a tenancy. As I find the Tenants' requests for toe kicks and replacement of kitchen cabinetry are actually requests for the Landlord to complete improvements and updates to the property, rather than requests for the Landlord to complete repairs and maintenance necessary to comply with the requirements of section 32(1) of the Act, I therefore dismiss these claims without leave to reapply.

With regards to the exterior stairs, although the Landlords denied any knowledge that the exterior stairs are separating from the home or sinking/settling into the ground, they acknowledged that they would repair or replace them if they were, and this constitutes a safety issue. I am satisfied that the safety and stability of stairs which give access to the rental unit, is a matter covered by section 32(1) of the Act. I am also satisfied by the testimony of the parties at the hearing, that there is a legitimate question about whether or not the exterior stairs meet health, safety, and housing standards required by law. As a result, I make the following orders:

- I order the Landlord to have all exterior stairs which give access to the rental unit inspected by a qualified professional as soon as possible and not later than 30 days from today's date.
- I order the Landlord to obtain from the qualified professional a report indicating whether the stairs comply with health, safety, and housing standards required by law, and if not, whether they require repair or replacement in order to be safely used.
- I order the Landlord to provide a copy of this report to the Tenants as soon as possible, and not later than 48 hours after receipt by the Landlord.
- I order the Landlord to repair or replace the stairs, if repair or replacement of the stairs is indicated as necessary in the report in order for the stairs to be safely used.
- I order that these repairs or replacements be completed as soon as possible, and not later the 90 days from the date the Landlord receives the report indicating they are necessary for safety reasons.

Conclusion

I order the parties to comply with the terms of the mutually settled agreement described in this decision. I also order the Landlord to comply with the above noted orders made by me with regards to the exterior stairs.

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: October 19, 2022

Residential Tenancy Branch