Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, RP, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and all 3 tenants attended the hearing. The tenant JQ (the "tenant") spoke on behalf of all 3 tenants. As all parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's application for dispute resolution and evidence except for two pages of text messages that the tenants were not successful in serving to him 14 days prior to the hearing. I find the landlord sufficiently served with the Notice of Dispute Resolution Proceedings package in accordance with section 89 of the Act. The 2 pages of text messages not provided to the landlord 14 days prior to the hearing were excluded from consideration in this decision and I advised the parties of this at the commencement of the hearing. The tenants acknowledge being served with the landlord's evidence.

Preliminary Issue
At the commencement of the hearing, the tenants advised me that they intend on vacating the rental unit at the end of this month. Pursuant to section 63, I recorded the following settlement of a portion of this application:

1. The parties mutually agree to end the tenancy. This tenancy will end at 1:00 p.m. on November 30, 2022 by which time the tenants and any other occupants will have vacated the rental unit.
2. The rights and obligations of the parties continue until the tenancy ends.

As the tenancy is ending, the tenants' application seeking an order for repairs to the rental unit is dismissed without leave to reapply.

At the beginning of the hearing, the tenants made an oral application seeking to increase their claim to include a 20% rent reduction until the end of the tenancy [November 30th] instead of until the time the application was filed. I determined that this could reasonably be anticipated by the landlord and allowed the amendment in accordance with rule 4.2 and section 64(3) of the Act.

Issue(s) to be Decided

Are the tenants entitled to a rent reduction?
Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant JQ gave the following testimony. This tenancy began on February 5, 2020. Rent is currently set at $2,613.63 payable on the first day of the month. The tenant does not recall if a condition inspection report was done at the commencement of the tenancy, but doubts one was done.

The tenants seek a return of 20% of the rent from the commencement of their tenancy until the end of the tenancy because the lock on their balcony door was inoperative. In their application, they write,

> *"We are requesting 20% of our rent from the period we have moved in as for the 3 months of the tenancy, the balcony door in [one of the tenant's]*

bedroom was inaccessible following this the door was opened but was unable to lock, which made us, the tenants uneasy as the door is the back entrance to the unit and accessible from the street. We have made a number of requests in person and by text and our landlord has not been able to fix the door".

The tenant states that contrary to clause 10 of the tenancy agreement, the landlord failed to provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. He did not comply with health, safety and housing standards required by law.

The south facing balcony door is accessible through a flight of stairs to the upper floor where they live. This room has no other windows and the only access to fresh air is from this door. In April 2020, it began to get hot, and the door wouldn't open. An email was sent to the landlord to fix it and he came on April 28th to fix a misalignment. The landlord applied lubricant to it, but it was unsuccessful. Over the next few months, the tenants asked to landlord to fix it but got no response.

On January 21, 2022, the tenant texts the landlord asking when he would fix the lock. The tenant states it happens daily and is very much not up to the legal standard of safety in a rental property and the landlord can consider the text as the tenant reporting it to the landlord now.

On January 24th, the landlord installed a new lock. The tenant testified they never touched it for many months and were afraid to open it. Months went by and in May, they discovered the lock installed by the landlord was ineffective, since the door could still be opened by simply sliding it open.

In the tenant's evidence is a letter sent to the landlord on May 30th from the tenant JH. In this letter, JH tells the landlord that this counts as an emergency repair, fully the landlord's responsibility. If [the landlord] feels he will not be able to get it done that soon; the tenants are able to get a contractor who is able to replace either the door and/or lock. The tenants will send the invoice with the amount to be deducted from the next month's rent. The tenant testified that no response was received.

According to the tenant's testimony, in May and June, the landlord made various attempts at fixing the door by applying duct tape to the top frame of the balcony door; installing a new handle that did not fit; and placing a wooden pole inside the door to secure it. None of the landlord's attempts at fixing the door were effective.

As of June 27th, the day they filed their application, the balcony door had not been repaired. The tenant testified that as of the date of this hearing, the lock to the balcony door is still not working and they still cannot properly close it.

The landlord gave the following testimony. The rental unit is located on the upper floor of a house. He does not know the age of the house, but guesses it's 25 to 30 years old. The balcony door is likely original to the house.

The landlord has tried several ways to secure the door and provide the tenants with the ability to keep people out: the handle, a crossbar and a lock at the bottom track. Any of these items can prevent access from outside. The landlord alleges the tenants are trying to "scam" him with a hoax break in that happened the morning of May 30, 2022.

The landlord testified that he purchased a new door handle on June 8th but it was the wrong model. On June 14th, the landlord offered to purchase a new sliding door but it would take 4 months to arrive. The tenant JH responded via text message on June 20th, saying, "*You made us aware earlier this afternoon in person, that you have been unable to find a repair person that is available to look at the door within the next 4 months. We feel this is not an acceptable timeframe for repairs, we are willing to bring in our own repair person and forward the costs if this is preferable to you?"*

The landlord testified that he agreed with their proposition, subject to the tenants getting preapproval from the landlord. The landlord understood the tenants had assumed the responsibility for finding the supplier/contractor and submitting the invoice to him.

The landlord notes that during this timeframe, due to covid-19 restrictions, government lockdowns and supply chain issues, obtaining parts to repair the balcony door was difficult. Contractors were unwilling to take on small jobs due to staffing shortages and suppliers ran out of stock. When parts he had earlier ordered arrived on June 29th, he replaced the bottom track wheel of the door to prevent the door being lifted out of its track.

Analysis

Upon consideration of the evidence 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.

7 Liability for not complying with this Act or a tenancy agreement

(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.

32 Landlord and tenant obligations to repair and maintain

(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.

33 Emergency repairs

(1)In this section, **"emergency repairs"** means repairs that are

(a)urgent,

(b)necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c)made for the purpose of repairing

(i)major leaks in pipes or the roof,

(ii)damaged or blocked water or sewer pipes or plumbing fixtures,

(iii)the primary heating system,

(iv)damaged or defective locks that give access to a rental unit,

(v)the electrical systems, or

(vi)in prescribed circumstances, a rental unit or residential property.

(3)A tenant may have emergency repairs made only when all of the following conditions are met:

(a)emergency repairs are needed;

(b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4)A landlord may take over completion of an emergency repair at any time.

65 Director's orders: breach of Act, regulations or tenancy agreement

(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:

> (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;

The tenants seek a rent reduction of 20% from the commencement of their tenancy beginning February 2020, to present, end of November 2020 pursuant to section 65 for an inoperative balcony door that wouldn't lock.

The balcony door provides access to the rental unit and repairs to the door qualify as an emergency repair under section 33(1)(c)(iv) of the Act. Before me, I have evidence from the tenants that they first notified the landlord of the issue in April of 2020 and the landlord coming to fix the door on April 27th. According to the tenants, that repair was unsuccessful.

It was not until January 11, 2022 that the tenants make their second follow-up request to the landlord regarding the inability to lock the door. In that text, the tenants indicate this has been an issue we raised with the landlord 23 months ago when they moved in. The landlord evidently found a new lock that was ultimately the wrong model and tried to install it on January 24th. I don't find fault in the landlord's choosing of the wrong model to repair the door.

I note that January 21, 2022 is the date the tenants advise the landlord that this is the date the landlord should consider the breach of the legal standard of a safety issue reported to him. On May 30th, the tenant JH advise the landlord via text that it is an emergency repair and that if the landlord can't fix it asap, then they would get a contractor, repair it and send him the invoice while making a reduction in their rent. This is followed up with another text dated June 2nd from JH advising that if they don't hear back from the landlord in one week, the tenants would pay for the repairs themselves and forward the charges to the landlord pursuant to section 33. The tenants testified that this text was not responded to within the week deadline.

Based on the communication between the parties, I find that the landlord was made aware of the emergency repair on May 30, 2022 and that he was given the choice on both May 30th an June 2nd to either do the repairs or allow the tenants to do them and deduct the cost from rent. I accept the landlord's version of what happened. He was

willing to have the tenants do the repairs, as long as the tenants kept him apprised of the contractor they hired to do the work. The tenants didn't follow through with the ultimatum they proposed. They didn't hire a contractor to replace the balcony door as they said they would. I cannot find fault in the landlord in choosing the option that was presented to him. Consequently, I do not find the landlord has failed to maintain the property in a state of decoration that complies with health, safety and housing standards required by law. I also find that, having regard to the age, character and location of the rental unit, the rental unit was still suitable for occupation by the tenants. I do not find credibility in the tenant's assertion that a stick in the track of the sliding door couldn't prevent the door from sliding open.

Further, the tenants provided evidence that after the first attempt at fixing the balcony door failed in April of 2020, they didn't remind the landlord that it was still an issue for them until January 2021. To remain silent for close to 2 years, then seek to be compensated for the time they were silent, demonstrates the tenants' failure to do whatever is reasonable to minimize the damage or loss as required under section 7 of the Act.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Given the evidence before me, I find the tenants did not suffer any damage resulting from a violation of the Act, regulations or tenancy agreement by the landlord. The tenants didn't provide any case law or scale of losses to show how they arrived at a 20% reduction of rent for me to consider; lastly, the tenants failed to take steps to mitigate the damage or loss by remaining silent for the majority of the period they seek compensation for. Lastly, and most importantly, the tenants advised the landlord in writing that they would take on the emergency repairs and deduct the cost from rent. This option is allowed under section 33 of the Act and it appears to me that the landlord accepted the tenants' offer which wasn't acted upon by the tenants.

For the above reasons, the tenants' application is dismissed without leave to reapply. The filing fee will not be recovered as the application was not successful.

Conclusion

Pursuant to section 63, I recorded the following settlement of a portion of this application:

1. The parties mutually agree to end the tenancy. This tenancy will end at 1:00 p.m. on November 30, 2022 by which time the tenants and any other occupants will have vacated the rental unit.
2. The rights and obligations of the parties continue until the tenancy ends.

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on November 30, 2022 should the landlord be required to do so.

The tenants' application for dispute resolution 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: November 18, 2022

Residential Tenancy Branch