



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding TOP VISION REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant October 12, 2022 (the “Application”). The Tenant applied for a repair order.

The Tenant filed an Amendment seeking compensation.

The Tenant appeared at the hearing with the Advocate. Representatives for the Landlord (the “Landlords”) appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

I dismissed the request for compensation with leave to re-apply pursuant to rule 2.3 of the Rules. This does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to a repair order?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate.

The Tenant listed the required repairs on the Application; however, some of these were resolved. The outstanding request for repairs includes:

- Bathroom: bathtub, drainage system
- Heating not working
- Fridge not working, freezing food
- Exhaust fan above stove not working
- Water pipes need cleaning

Tenant

The Tenant and Advocate testified as follows in relation to the above issues.

The bathtub drain is clogged and drains very slowly. The bathtub plug is broken such that the bathtub does not hold water.

The pipes throughout the rental unit need to be cleaned. Dirt and debris come out of the faucets in the water.

The heat in the rental unit is not working. It is too cold in the rental unit. The Tenant has lived in the rental unit for a number of years and the heat was not previously an issue which is how the Tenant knows there is something wrong with the heat. The thermostat in the rental unit shows the temperature as 30 degrees when the temperature is only 12 degrees.

The fridge is not working and freezes food when the food is at the back of the fridge. The Tenant cannot keep all of their food at the front of the fridge because then there would not be enough space.

The exhaust fan above the stove is working but is too loud for the Tenant.

Landlords

The Landlords testified as follows in relation to the above issues.

The bathtub drain is not clogged as shown in the video submitted. The Property Manager attended the rental unit three times after receiving the complaint about the bathtub drain. The first time, the bathtub was draining fine. The second time, the Landlord hired a plumber who issued a report showing there was nothing wrong with the drain. The third time, the Property Manager took the video submitted showing the drain is working fine. The bathtub plug is not broken.

No other units in the building have complained about dirt or debris coming from their faucets in the water. The Property Manager has attended the rental unit and does not see dirt or debris in the water. Debris may get into the water lines due to construction around the building but all the Tenant has to do is run the water for a minute and the dirt and debris is gone.

The Landlord hired someone to check the heating in the rental unit and building, they did so and issued the invoice showing there is no issue with the heating. The Tenant's thermometers show the rental unit is colder than it is as shown by the Landlord's thermometer readings. The Tenant has their bed in the living room and lives in this room which has a large window and sliding glass doors which make the room colder than the bedroom which only has a small window.

The Landlord sent someone to look at the Tenant's fridge and food was only freezing where it was touching the back of the fridge. The Tenant was told not to push food right up against the back of the fridge. The issue is how the Tenant is keeping their food, for example, the Tenant is not keeping vegetables in the drawers for vegetables. Agents for the Landlord have never actually seen frozen food in the fridge, only photos of this from the Tenant.

The fan above the stove is working and is just old.

Tenant reply

In reply, the Tenant and Advocate testified as follows.

The Tenant agrees the Property Manager attended the rental unit three times in relation to the bathtub drain issue.

The bedroom is not much warmer than the living room.

Evidence

The Tenant provided photos of the issues in the rental unit. The photos are not dated such that I can tell when they were taken.

The Landlord provided photos to support their position. The Landlord also provided videos of the bathtub draining and the Property Manager measuring the temperature in the rental unit. The Landlord submitted an invoice from a heating, cooling and plumbing company who attended the rental unit stating that the heat was working fine and the Tenant had their window open in minus six degree weather.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

The Landlord's obligations in relation to repairing and maintaining the rental unit are set out in section 32 of the *Act*.

I am not satisfied based on the evidence submitted that the bathtub is not draining properly. The Tenant has only provided photos of water in the bathtub which are not compelling evidence of whether the drain is working. The Landlord provided a video showing the drain is working which is compelling evidence contradicting the Tenant's claim.

I am not satisfied based on the evidence submitted that the bathtub plug is broken because the Tenant did not submit documentary evidence showing this and the Landlords disputed this.

I am not satisfied based on the evidence submitted that dirt and debris are coming out of the faucets in the water in the rental unit because the Tenant has not submitted any compelling evidence showing this. The Tenant has not submitted a photo or video of water coming out of a tap with dirt or debris in it. The Tenant has only provided photos of dirt in the bathtub, some with water and some without water. This does not show that the water coming out of the tap has dirt or debris in it.

I am not satisfied based on the evidence submitted that the heat in the rental unit is not working properly or needs repair because the Landlord has submitted an invoice from a company who attended and determined that the heat was working fine. I also note that the invoice says the Tenant had their window open in minus six degree weather, which obviously would lower the heat in the rental unit. I also find it to accord with common sense that it is colder in the living room, which is a larger room with a large window and sliding glass doors, than it is in the bedroom which has one small window. I simply note the previous two points because I am not satisfied the Tenant is doing what they can to address the issues they are raising.

I am not satisfied based on the evidence submitted that the fridge is not working because the Tenant has not provided compelling evidence of this. The Tenant has simply provided photos of food, not food that is in the fridge. Some of the photos do not actually show an issue with the food. Some of the photos show the food is frozen or going bad but again it is just a photo of food without any context. The Tenant has not provided a photo of how they are keeping their food in the fridge showing that food at the back is freezing while food at the front is a normal temperature. The Tenant has not provided a video showing that this issue is occurring.

The exhaust fan above the stove is working by the Tenant's own admission. The Tenant has not provided any supporting evidence that the exhaust fan is so loud it is unreasonable. I am not satisfied the exhaust fan needs repairs.

In summary, the Tenant has simply not provided any compelling evidence to prove the issues raised are in fact repair issues that the Landlord needs to fix. Photos of most of these issues are simply not sufficient. Given this, the Tenant has failed to prove the claim and I dismiss the request for repairs without leave to re-apply.

I note that the Landlords advised that this is the third hearing the parties have had before the RTB about issues in the rental unit. I told the Tenant during the hearing that providing photos of most of these issues is simply not sufficient because it is not

compelling evidence that the issues raised are in fact repair issues that need to be fixed. I suggested to the parties that, moving forward, they take videos of both of them investigating the issues raised by the Tenant so it is clear what the parties are hearing or seeing.

Conclusion

The request for repairs is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 24, 2023

Residential Tenancy Branch