Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, LRE, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order that the landlords make repairs to the rental unit pursuant to section 32;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $996.08 pursuant to section 67;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

This matter was reconvened from a prior hearing on November 21, 2022. I issued an interim decision setting out the reasons for the adjournment on November 22, 2022 (the Interim Decision). This decision should be read in conjunction with the Interim Decision. At this hearing, the tenant was represented by a different advocate than she was at the prior hearing.

In the Interim Decision, I ordered:

1) No later than 21 days prior to the reconvened hearing, the tenant serve the landlord and the Residential Tenancy Branch with:
    a. A completed monetary order worksheet;
    b. A copy of the invoice for the combined cost of the amount the tenant seeks to recover for repairs to the washing machine;
    c. Any other documentary evidence she intends to rely on at the reconvened hearing; and
    d. A copy of all the tenant's evidence (both evidence already submitted and any new evidence) saved as a single PDF file, with page numbers.

LX stated that the tenant served her (via her cousin) on March 8, 2023, 16 days before the hearing. She stated that, despite this, she was prepared to address the evidence at the hearing. Accordingly, I admit the tenant's documentary evidence.

LX stated, and the tenant confirmed, that she served the tenant with her documentary evidence package.

In the Interim Decision, I also ordered:

> The tenant may not amend her application prior to the reconvened hearing.

In her evidence package, the tenant included a revised monetary order worksheet which listed her monetary claim as $2,052.62 and included four new bases for damages. This amounts to an attempt by the tenant to amend the application to increase the amount of her monetary claim. Based on my order in the Interim Decision, I decline to amend the application to include these new bases for damage.

Issues to be Decided

Is the tenant entitled to:

1) a monetary order of $996.08;
2) an order that the landlords comply with the Act;
3) an order to suspend or set conditions on the landlords' right to enter the rental unit;
4) an order to the landlords to make repairs to the rental unit; and
5) recover the filing fee?

Evidence and Analysis

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 30, 2021. Monthly rent is $3,500 and is payable on the first of each month. The tenant paid the landlords a security deposit of $1,350 and a pet damage deposit of $1,350, which the landlords continue to hold in trust for the tenant.

The tenant testified that the landlords have not made repairs to the rental unit that they are obligated to make in a timely fashion, nor have they reimbursed her for the repairs that she has made.

1. Repairs Made by Tenant

    a. Washing machine

The tenant testified that the basement washing machine stop working in the summer of 2022 and that she attempted to troubleshoot the problem herself. She testified that she notified the landlords of issue on September 1, 2022. LX replied on September 8 asking for more details. The tenant responded, asked LX to fix the machine by September 13, and indicated that she used the machine on a regular basis. She stated that if the landlords did not repair it she would hire a local company to do it.

On September 14, LX replied indicating that the tenant did not require a second washer and she should use the upstairs washing machine. She stated that “reasonable requests would be answered in an appropriate time”. She indicated that one week would be a reasonable time for “non emergencies”.

The tenant replied that she has arranged for a technician to attend the rental unit to look at the washing machine and that if the landlords did not reimburse her within five days, she would make an application for dispute resolution. She asserted that the basement washing machine were included as part of the rent that she pays and she was entitled to have them functioning.

The tenant arranged for a technician attend the rental unit on September 30 to determine the cause of the issue. The tenant submitted correspondence from the technician which indicated that the issue with the washer was that the circuit board failed and that “nobody is to blame” for the failure. I accept this as true. The technician ordered a replacement part and installed it on October 21, 2022. The tenant submitted a $657.07 invoice for the initial inspection and the supply and installation of the replacement part.

On October 18, 2022, LX wrote the tenant that she would be sending a different technician over. The next day the tenant replied and stated that she had already made arrangements with the technician to order the replacement part.

LX argued that the tenant is not permitted to make repairs to the washer herself and then be reimbursed the repair cost. The testified that she had paid a different technician to attend the rental unit on October 19, 2022, and that this would have resolved the issue. She stated that she sent her cousin to the rental unit on September 30, 2022 to inspect the washing machine, and that this was sufficient to discharge her obligations as a landlord.

I disagree. Section 32 of the Act requires a landlord to maintain and repair the rental unit. A landlord is expected to make required repairs within a reasonable time frame. LX was advised of the issue with the washer on September 1. Based on her own testimony, she took no action to address the issue until September 30, when she sent her cousin to look at the washer. This one-month delay is unreasonable. LX did not explain why she waited nearly one month to address the issue. The fact that the tenant has a second washing machine is not a excuse this delay. The tenant is paying for two washing machines as part of her rent and she is entitled to have both operational.

As such, I find that the landlords have breached section 32 of the Act. This breach caused the tenant harm in that she was deprived of a service she was paying for. The Act requires the tenant to act reasonably to minimize her loss resulting from the landlord's breach. I find that it was reasonable for her to engage a repair technician to address the issue, given that the landlord took no action for over a month.

Accordingly, I find that the tenant is entitled to recover the cost she incurred repairing the washing machine. I ordered the landlord to pay the tenant $657.07.

b. Refrigerator

The tenant testified that the water filter and the ice maker in the rental unit’s refrigerator were not working. She stated that problem with the water filter was causing water to leak on the floor of the rental unit. She advised the landlord of this on April 23, 2022. Five days later LX replied and asserted that the tenant did not put the new filter in properly, and that this caused of the problem with the ice maker. I am unsure how LX came to this conclusion. She also argued that this type of maintenance is the tenant’s responsibility.

On May 4, the tenant wrote LX and stated that she hired a handyman to look at the refrigerator and was advised that part needed to be replaced. She stated that the

problem with the ice maker was not connected to the issue with the filter. She stated that she had spoken to the landlord 's cousin, who told him that “he is no expert” so he was not able to help.

The tenant purchased a new filter for the refrigerator at a cost of $45.91 and paid her handyman $60 to inspect the refrigerator and install the filter. She submitted receipts for these two expenses. The handyman receipt indicates that the water filter did not clip in, and that he had to take it apart and adjust it.

Residential Tenancy Branch Policy Guideline 1 is silent as to whose responsibility it is to replace filters in appliances. However, it places the responsibility for changing furnace filters on the landlord. As such, I find it appropriate to assign the responsibility for changing the refrigerator water filters to the landlord.

Based on the evidence presented to me at the hearing, I find that the refrigerator’s water filter was either not working properly or needed to be replaced. I do not find that the tenant, or her handyman, installed the water filter incorrectly, as suggested by LX in her e-mail. As such, I find that it is the landlords’ responsibility to bear the cost of purchasing a new water filter and installing it. The landlord did not do this, and rather insisted it was the tenant’s responsibility. This is not correct.

I order that the landlords reimburse the tenant the cost of purchasing and installing the water filter ($105.91).

On June 17, 2022, the tenant wrote LX stating that the ice machine was not working again and asked to have a service technician repair it, as her handyman did not know what the problem was.

As of the date of the hearing, the ice machine does not work. At the hearing, the tenant testified that there is a “red symbol” illuminated on the refrigerator and that the ice is “getting fuzzy”. The tenant seeks in order that the landlord repair the ice maker. The landlord said she would send someone to the rental unit to inspect the ice maker.

I order the landlord to inspect the ice maker and make all necessary repairs.

c. Back door lock

On September 4, 2021, the tenant advised the landlords that the doorknob on the back door was “not releasing”. On September 11, LX replied that she would send her cousin to the rental unit too take a look. Within minutes of receiving this e-mail, the tenant replied that she had replaced the lock and would be sending the landlord a bill.

She provided an invoice from her handyman for $95 stating that the latch was stuck and would not secure the door and that he provided a new lock to the tenant at no charge.

The tenant argued that the back door locking issue was a matter of security and was urgent.

LX argued that the tenant did not provide her with sufficient time to undertake the repairs prior to incurring this cost and should therefore not be responsible the cost of the repairs.

In this case, I agree with the landlord. The tenant did not allow the landlord a reasonable amount of time to inspect or undertake the repairs. The tenancy agreement specified contact information for LX’s cousin, who was the person the tenant was supposed to contact in the event emergency repairs were required. There is no evidence before me to indicate that the tenant did this.

Accordingly, I do not find that the landlord breached the Act. She was not given reasonable amount of time to undertake the repairs. I therefore declined to reimburse the tenant the cost of fixing the back door and dismiss this portion of her claim.

The proper procedure a party should follow when there is a problem with the rental unit which is the landlords responsibility to repair is that the tenant must notify the landlord of the need for repair and give the landlord a reasonable amount of time to complete the repair. If the repair amounts to an “emergency repair”, as defined in section 33 of the Act, the tenant should contact the landlords’ designated emergency contact.

It is only in the event when the landlords fail to act within a reasonable time that a tenant can undertake ordinary repairs. Section 33 sets of the circumstances when a tenant can undertake emergency repairs.

d. <u>Slip Prevention and Back Gate</u>

On June 21, 2022, the tenant emailed LX stating that the back gate latch was not securing and that this posed a safety risk. She stated that if she did not receive a response from the landlords within three days, she was going to ask her handyman to fix it.

For the reasons stated above, this is not the appropriate course of action to resolve this problem. The tenant must give the landlords a reasonable amount of time to correct the problem. I do not find that this issue amounts to emergency as contemplated by section 33 of the Act.

On July 4, the tenant emailed the landlord stating that the nails had come out or broken off of an anti-slip strip on the exterior stairs of the rental unit. She wrote that she slipped on the stairs earlier that day. She stated that this posed a safety risk and that she would wait until the next day before calling her handyman.

On July 6, LX replied and apologized for the lateness of her reply as her mother just had surgery. She stated that her cousin would come over on the weekend to inspect the gate latch. She also stated that the tenant could simply fix the anti-slip strip herself with a nail and a hammer.

The tenant submitted an invoice dated July 5 for $90 for the removal and reinstallation of a new gate latch and for reattaching the anti-slip strip. This invoice indicated that the latch did not lock. I find this warrants a repair. The tenant gave the landlords sufficient time to remedy the problem (over two weeks), and the landlords did not take any steps to do so. She is entitled to recover the costs that she incurred making the repairs herself.

I do not find that the tenant provided the landlord with a reasonable amount of time to make repairs to the anti-slip strip. Additionally, I cannot say whether it was necessary for her to incur the cost of a handyman to make the repair. The tenant could not have nailed the anti-slip strip in herself. I declined to order that the landlords reimburse any portion of the July 5 invoice relating to the replacement of the anti-slip strip.

The July 5 invoice does not provide a breakdown of how much time was spent undertaking each of the two tasks. In the circumstances, I find it appropriate to assign 2/3 of the invoice to the replacement of the latch. Accordingly, I order that the landlords paid the tenant $60.

2. Requested Repairs and Maintenance

In addition to the repair of the ice maker, the tenant seeks the following work to be done at the rental unit:

- Servicing the fireplace
- Inspecting the furnace
- Cleaning the air ducts
- Cleaning the gutters
- Repair anti-slip stripping on exterior stairs
- Servicing the stove

a. Fireplace and Furnace

The tenant testified that there was nothing wrong with the gas fireplace or the furnace but wanted them inspected to make sure they are in good working order. LX argued that since they are working properly, there is no need to inspect them.

Policy Guideline 1 states that the landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications. The parties have not provided any evidence as to what the manufacturer specifies regarding inspections. Accordingly, I find that the landlords must inspect it annually. As such, I order the landlord to arrange for an inspection of the rental units' furnace, which must be conducted by someone with expertise in the field.

Policy Guideline 1 does not place any similar obligation on the landlord for inspecting fireplaces. As such, I decline to order that the landlords undertake any such inspection.

b. Air Ducts

The tenant argued that the landlords are required to clean the air ducts in the rental unit at regular intervals. LX argued that she replaces the furnace filters every six months, so there is no requirement to have the ducts cleaned. The tenant provided a copy of a duct cleaning invoice from November 2021 for the rental unit which stated that the ducts must be cleaned every 6 to 12 months. The tenant did not provide me with any evidence beyond this invoice standing for the proposition that the ducts required to be clean (for example, photographs of debris filled registers or an inordinate amount of dust in the rental unit, or testimony about odors emanating from the ducts).

Policy Guideline 1 states that the landlord is responsible for replacing furnace filters, and for cleaning heating ducts and ceiling vents as necessary. However, I do not find that it is necessary to clean the air ducts every 6 to 12 months. I assign little weight to what is written on the invoice as to the frequency of air duct cleaning, as the duct cleaning company has a vested interest in having the ducts cleaned regularly.

As such, in the absence of evidence to the contrary, I do not find that it is "necessary" to clean the air ducts in the rental unit at this time. I dismiss this portion of the tenant's application, with leave to reapply.

c. Gutters

The parties agreed that the landlord has not cleaned the gutters in the last two years. There is no evidence before me to suggest that the gutters are improperly functioning or otherwise clogged. Policy Guideline 1 does not require a landlord to conduct inspections of gutters to see if they are clogged or not. As such, and as there is no evidence that the gutters are clogged, I dismiss this portion of the tenant's application with leave to reapply.

d. Anti-slip strips

The tenant testified that the landlords need to repair additional anti-slip strips on the exterior stairs. At the hearing, XL landlord agreed to fix this. As such, I order the landlord to do so.

e. Stove

The tenant has not provided any evidence which indicates that the stove is not working. In the absence of evidence to the contrary or a requirement in the Policy Guidelines, I do not find that the landlord is obligated to service or maintain a kitchen stove which is fully operational. As such, I do not find that any repairs are warranted. I dismiss this portion of the tenant's application.

3. Order that the Landlord Comply with the Act

The tenant stated that she wants LX to reply to her emails, to accept responsibility for repairs, and to stop gives conflicting instructions as to who to contact when she needs repairs done.

She stated that she intends to contact LX directly with any repair requests, and not contact LX's cousin.

LX stated that she resides in China, whereas her cousin lives near the rental unit. She stated that her cousin is the contact for emergency repairs, and that she should be the point of contact for all other repair requests.

Section 33 of the Act requires the landlords to provide the tenant with the name and phone number to contact in the event emergency repairs are required. LX's cousin is that contact and is who the tenant should contact if emergency repairs are required. For reference, section 33 defines emergency repairs:

> **33** (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.

Per LX's request, the tenant should contact LX for all other repair requests. As stated above, the landlords have an obligation to act upon the tenant's requests for repairs in a reasonable time frame. If LX is unable to do this due to being in China and having limiting ability to access the email account she provided the tenant (something she claimed at various points in her correspondence with the tenant), LX can arrange for another, more timely, mode of communication with the tenant or provide the tenant with the contact information a local agent who can hand routine repair requests.

LX's inability to receive emails in a timely fashion due to her location does not excuse her from her obligations under the Act.

4. Restrict Landlord's Access to the Rental Unit

The tenant testified that LX's cousin attends the rental unit once a month to conduct an "inspection". She stated that these were not true "inspections" as he never provides her with a report. She states that they are inconvenient for her and feels that LX is sending him over to harass her. She did not receive notice of the most recent inspection, and that when she does receive written notice of them, the dates or times are incorrect.

The tenant seeks an order that these "inspections" be restricted to once every six months.

LX testified that the purpose of the inspections is to give the tenant an opportunity to raise issues about required repairs.

Section 29(1) of the Act gives the landlord the right to enter the rental unit if the landlord serves a 24-hour written notice stating the purpose for entering. It requires that the purpose be reasonable. Section 29(2) states that a landlord may inspect a rental unit monthly.

As such, there is nothing fundamentally inappropriate with the landlord conducting monthly inspections of the rental unit, so long as proper notice is given. These inspections differ from move-in or move-out inspections, in that there is no requirement that a report be produced, or that the tenant be present for them.

As such, I do not find that the monthly inspections represent a breach of the Act. The tenant did not provide any specific details of the written notices received from the landlords, so I cannot say if they complied with the requirements of the Act.

If the landlords provide the tenant notices of entry in accordance with the Act, they are entitled to conduct monthly inspections. The tenant does not need to be present for these inspections.

However, these inspections are not a substitute for the tenant being able to report issues with the rental unit directly to the landlords. The tenant is entitled to do this under

the Act. It is not reasonable to require the tenant to wait until the next inspection to report an issue with the rental unit.

I dismiss this portion of the tenant's application without leave to reapply.

5. Filing Fee

As the tenant has been partially successful in this application, she is entitled to recover the security deposit from the landlords.

Conclusion

I order the landlords to repair the refrigerator's ice maker, to inspect the furnace, and to repair the anti-slip strips on the exterior staircase. They must complete these repairs and inspections no later than May 30, 2023. If they fail to do this, the tenant may deduct $50 from June's rent each month's rent thereafter until the repairs and inspections are completed.

Pursuant to sections 67 and 72 of the Act, I order that the landlords pay the tenant $922.98, representing the following:

Description	Total
Washing machine repair	$657.07
Latch repair	$60.00
Water filter installation	$105.91
Filing fee	$100.00
	$922.98

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: April 20, 2023

Residential Tenancy Branch