



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, RR, 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 to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to sections 27 and 65; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord AG attended the hearing with her niece acting as an interpreter. Both tenants attended the hearing. The landlord acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package and the tenant's two amendments, saying the last amendment was received on April 21, 2023.

Preliminary Issues

The landlord argued that the amendment was received late and by the time she got it, it was too late for the tenants to bring it on. Rule 4.6 states that a copy of the amended application must be received by the respondent not less than 14 days before the hearing. As the landlord acknowledged receiving the amendments more than 14 days before the hearing, I allowed the amendment seeking compensation of \$7,800.00 by means of a \$200.00 per month reduction in rent from January 2020 to April 2023.

The parties agree that the tenants vacated the rental unit on May 1, 2023 and the landlord has been served with the tenant's forwarding address. As such, I determined the tenancy has ended and the tenants' application seeking to dispute the landlord's notice to end tenancy is dismissed without leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to a \$200.00 per month compensation from January 2020 to April 2023?

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 rental unit is a basement suite located in the landlord's single-family home. The landlords occupy the upper unit. The tenancy began on September 3, 2016, with rent set at \$1,600.00 per month payable on the first day of each month. A security deposit and pet damage deposit were collected by the landlord, and she continues to hold it.

The tenant CM testified that in January 2020 they heard a leak in the walls and immediately contacted their landlord who came downstairs to listen to it. The tenants continued to advise the landlord that the leak was getting worse and at one point the landlord replaced the drywall without fixing the plumbing issue that caused the leak.

The leak was located in their 5-year-old son's room and the tenants had to move furniture and toys away from the spot directly below the dripping leak and placed a bucket under the leak to catch water. Except on occasions where the landlord used the shower directly above, the tenants didn't have to empty the bucket very often as it was just drips and dribbles of water.

The tenants' son frequently slept in their room because the sound of the drips irritated him and he found the noise "creepy". The tenants were concerned about the quality of the air due to mold, so they sprayed mildew spray, covered the moldy spot in plastic wrap and put in air purifiers.

The landlord testified that the tenant CM never called her about the leak issue, it was only the co-tenant DR who contacted her via text. The landlord has always been responsive to the tenant's concerns.

The leak began in January 2020 which was during the covid pandemic. The landlord argues that the tenants requested that no tradesmen come to fix it due to concerns of catching covid. When the leak was first reported to her, there was nothing visible, just the sound of water. That is the reason the landlord didn't do anything to fix it at the beginning.

The only time there is a water problem is when the shower in the second bathroom gets used. Since learning about the plumbing issue, the landlord has not used this shower except on one occasion where a friend's son took a shower without advising the landlord.

The tenant countered saying the only time she asked that no tradesmen come was when a broken window needed replacement in April of 2020. At no time did the tenants ask the landlords not to fix the leaking pipes.

Analysis

Section 32 requires that a landlord must provide and maintain a 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.

In the case before me, I find the landlord has fallen short of their obligations under section 32. The evidence before me indicates that while the tenants continually advised the landlords that the water leak worsened, the landlord did nothing to stop the leak. Instead, the landlord replaced the moldy drywall and discontinued using the shower that caused the leak. A letter sent by the landlords to the tenants on December 30, 2022 acknowledges that the pipe is leaking and aging and would cost between \$4,000.00 to \$7,000.00 to fix. The landlord asks the tenants to move out in this letter.

I find the tenant's document **Timeline_of_Leaking_Pipe_Damages.pdf** to be a useful chronology of the leaking pipe issue. According to this document, mold began to grow as of April, 2020 and the issue became worse on December 28, 2021 when the tenants had to put a bucket under the leak, and move furniture away from the area. The problem appears to remain unresolved and appears to worsen by October 16, 2022 when enough water to fill a bucket leaks from the ceiling.

After a formal request for repairs was made by the tenants, the landlord patched the damaged drywall over, without fixing the cause of the leak on January 26, 2023. Section 65(1)(f) of the Act states that if the director finds that a landlord has not complied with the Act, regulations or tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

Earlier, I found the landlord failed to comply with section 32 in failing to provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. This has led to a loss for the tenants as they were required to live in a residential property with buckets on the floor to catch water drips and black mold in the drywall.

I find the tenants acted reasonably to minimize the damage or loss. I find the tenants notified the landlord of the leaking pipe issue immediately and continued to advise the landlord of the worsening condition throughout the tenancy. The landlord chose not to repair the leak and refrain from using the shower instead. Unfortunately, the shower was used by the landlord's guests and the leak got worse.

The tenants seek \$200.00 per month compensation from January 2020 to April 2023. In reviewing the evidence, it appears to me the mold began to grow in mid-April of 2020 and the tenants began to use the buckets on December 28, 2020. While there may have been water leaking since January of 2020, and mold began to grow in April of 2020, I do not consider it to be a substantial breach of health, safety and housing standards until early December of 2020 when the tenants had to seal over the drywall and install air purifiers to contend with the mold.

The situation remained unresolved until the time the tenants moved out, on May 1, 2023, a period of 28 months from December 1, 2020. For this hearing, the tenants did not provide any justification for a \$200.00 reduction in rent for the period, testifying that they felt it was “fair”. As the tenants did not prove the value of the damage or loss by providing case law of similar decisions for me to consider, I am left without any means to calculate it. Residential Tenancy Branch Policy guideline 16 – compensation for damage or loss states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

The tenants did not seek aggravated damages, and this is not a case where aggravated damages ought to be awarded. Consequently, I award the tenants nominal damage for the 28 months of living with the water leak at 10% of the value of the tenancy, or \$160.00 per month. [$\$160.00 \times 28 = \$4,480.00$].

As the tenant’s application was successful, the tenants are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

I note that the tenancy ended on May 1, 2023 and the landlord has not yet returned the tenants’ security deposit as of the date of today’s hearing. I remind the landlord that she is obligated to comply with section 38 of the Act and repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Conclusion

Pursuant to section 65, the tenants are awarded a monetary order in the amount of \$4,580.00.

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: May 8, 2023

Residential Tenancy Branch