



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

One of the tenants and the landlord, and the landlord's spouse attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed term tenancy began on December 1, 2021 and reverted to a month-to-month tenancy after November 30, 2022 and the tenants still reside in the rental unit. Rent in the amount of \$1,600.00 was payable on the 20th day of each month, which has been increased to \$1,632.00 per month effective January 1, 2023, and there are no rental arrears. On November 25, 2021 the tenants paid a security deposit to the landlord in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was paid. The rental unit is a basement suite, and the landlords live in the upper level of the home.

The tenant further testified that in December, 2021 the toilet was not working, so the tenant advised the landlord, who looked and said he would call a plumber, but the tenant would be responsible for the cost. It's an emergency repair, and the landlord disagreed. The landlord paid the plumber, and the tenant reimbursed the landlord, saying it's not fair. The tenants absolutely did not put anything in the toilet. The tenant's kids are grown, and would not purposely do anything like that. The tenant has provided a copy of an Invoice from a plumbing company for a cost of \$262.50 dated December 15, 2021. The Invoice states: "Auger several times until clear. Test, all working well."

Also, a glass top 4-burner stove has a marked burner. The front left side is the one usually used and it works fine, but has some wear and tear. The landlord has told the tenants it will have to be replaced due to damage and the tenants would be held liable. There were no scratches on it at the beginning of the tenancy.

The landlord gave the tenant a notice, a copy of which has been provided for this hearing, indicating that during an inspection on December 11, 2022 substantial scratches appeared on the glass surface of the stove cooktop, and chipped enamel in a sink, both of which will be repaired at the tenants' expense. It also states that the tenants must remove a bike from the laminate floor in the bedroom and put a pad under it, as well as putting pads under office chairs in both bedrooms to avoid damage. The tenant put mats under the chairs but was appalled at things in that letter because the tenant feels he's being watched, and it's overwhelming. The tenants have no pets, don't smoke, and the tenants are being blamed for everything. The knobs on the dryer have to be in a certain direction, which is ridiculous. The tenants are walking on eggshells. The tenants treat the rental unit as their own home.

The tenants seek an order recovering the money paid for the plumbing bill, and that the tenants not be held responsible for wear and tear. The landlord has inspected the rental unit twice so far.

The landlord testified that he sent a photograph of the dryer to the tenants for the most energy efficient operation.

The landlord has filed an application for a damaged sink and stove, which is set for hearing in October, 2023. The stove was installed brand new and the rental unit was fully renovated prior to this tenancy. The landlord saw substantial scratches on the stove, but it is now under 2 years old from the date of purchase.

The toilet was installed brand new a month before the tenants moved in by a professional plumber and it worked fine. The landlord checked to see if any parts were broken and found none so called a plumber and the tenant agreed to pay for it.

The landlord has also provided a copy of a move-in condition inspection report signed by the landlord and by a tenant on November 25, 2021 showing that everything was in good repair at the beginning of the tenancy and that no repairs were required at that time.

The landlord's spouse testified that the landlords completed a major suite repair, wanting it to be in a nice order for future tenants' use, and for the landlords' family. It was unexpected to the landlords that this level of damage could occur in 1 year to the stove. The landlords have the same stove in their suite and it has very few scratches over the 10 years of use.

The toilet was clogged by the tenants, and they should pay for it. The landlords' toilet did not clog at that time.

Analysis

Firstly, there is nothing in the *Residential Tenancy Act* that permits me to make a declaration that any damages are wear and tear. A tenant is required to make repairs to damages caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. A landlord is required to maintain a rental unit in a standard that makes it suitable for occupation by a tenant. If a landlord claims that damages are not wear and tear, the landlord may make an application for compensation, which the landlord has done. Therefore, it would not be appropriate for me to make any findings with respect to the glass stovetop, that is something that will be dealt with at the October, 2023 hearing.

With respect to the clogged toilet, the tenants claim emergency repairs, which are defined by the law as:

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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I agree with the tenant that the clogged toilet qualifies as an emergency repair. The landlord testified that the tenant agreed to pay for it, but that is disputed by the tenant who testified that he told the landlord when the tenant paid the landlord, that it was not fair. I have also reviewed the Invoice of the plumbing company which simply states that the clog was cleared, but no indication of what clogged it. If the landlord were to make an application for the plumbing bill, the landlord would be required to establish that the toilet was clogged by the actions or neglect of the tenant or a person permitted on the property by the tenant. I see no evidence of that, and in my view may very well have been a clog at the beginning of the tenancy from the installation process which was increased with common use.

In this case, the tenants have not applied for monetary compensation, but for an order that the landlord comply with the *Act* or the tenancy agreement. Considering that the clogged toilet happened within a few weeks of the tenancy, and the toilet was new at the beginning of the tenancy, I am not satisfied that the clog was a result of the tenants' actions or neglect, and I find that the repair was an emergency repair. According to the law, the tenant must make a request for reimbursement from the landlord, and if the landlord fails to do so, the tenant may deduct the amount from rent.

A landlord must provide a tenant with quiet enjoyment of a rental unit, free from unreasonable disturbance. I order the landlord to do so, and to avoid making unreasonable requests of the tenants. The rental unit is the tenants' home exclusively.

Conclusion

For the reasons set out above, I hereby order the landlord to comply with the *Act* by providing the tenants with quiet enjoyment of the rental unit, free from unreasonable disturbance, and to avoid making unreasonable requests of the tenants.

This order is final and binding and may be enforced.

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 15, 2023

Residential Tenancy Branch