



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, RP, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on February 8, 2023 seeking repairs to the rental unit, site, or property, and a reduction in rent for repairs agreed upon but not provided. They also requested reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on June 1, 2023 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The Tenant and the Landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding and the Tenant’s evidence via registered mail. The Landlord did not provide evidence for this hearing; at the outset of the hearing, I advised the parties that testimony in the hearing, affirmed under oath, is evidence and I give all testimony due consideration.

Preliminary Matter – timeline for this decision

While the *Act* s. 77(1)(d) sets a 30-day time limit for a decision of the delegated decision maker, ss. (2) states that authority is not lost, nor the decision invalidated, if a decision is given past the 30-day period.

The parties’ right of due process, entailing a thorough consideration of all evidence, and my deliberation of the applicability of the law, outweighs the need for a 30-day time limit. Also, this was a matter of the Tenant’s right to repairs, and compensation. This did not concern an eviction or an end of tenancy that are matters of more immediate human consequence.

Issue(s) to be Decided

- Is the Tenant eligible for a reduction in rent, for repairs agreed upon but not provided, pursuant to s. 65 of the *Act*?
- Is the Landlord obligated to make repairs, pursuant to s. 32 of the *Act*?
- Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant did not provide a copy of a tenancy agreement document. They described basic points about the tenancy, with the specific understanding about required yard work. The Landlord described the need for the Tenant to complete routine yard maintenance, for which they provided a lawnmower. The Tenant stated they had been completing these duties as required.

The Tenant provided that the tenancy started on July 1, 2022. They described “sort of” completing a condition inspection of the rental unit and rental unit property at the start of the tenancy. At the time they moved in the Landlord was not present and the previous tenants were moving out at the same time. On this single point, the Landlord stated they dealt with problematic prior tenants, who promised to clean in the rental unit but did not.

At around the time they signed the tenancy agreement, the Landlord informed the Tenant of pending perimeter work at the property. The Landlord stated to the Tenant this would not impact the Tenant. This excavation then started in October, and it affected the Tenant’s use of the yard from that point forward.

This work involved digging up the lawn around the outside of the house and installing drainage pipe, also requiring removal of the existing driveway and paved path on the property. The Tenant described trees on the property also being removed, as well as trellis and fence panels removed. The permitter drain was eventually added, and the Landlord added drainage in the yard as well, as described by the Tenant in the hearing.

The Tenant in the hearing stated they knew about “typical work like this” and a usual timeline, because of their work skills and knowledge.

On their Application, the Tenant made a specific request for completion of repairs, as follows:

Lawn repair Back yard to be put back to condition of move in after perimeter drain work (sidewalk, paved patio, rose bush, fruit tree, raised planter soil retention etc) Concrete driveway removed

Carpet stairs deemed too dirty to clean, not replaced Loose sink in washroom to be repaired Handle fallen off kitchen sink Missing glass in kitchen cupboards Door falling off cupboard Missing closet door Broken front door glass

In the hearing the Tenant acknowledged that lawn repair in the backyard was completed after reseeded in late April/early May. This was after the lawn was removed by an excavator to complete the project involving drainage on the property.

As of the date of their Application on February 8, the Tenant set out their claim for a reduction in rent as follows:

Landscaped yard torn up for perimeter drain work, promised three week repair now 4-5 months with no remediation work completed. (Lawn, paver [sic] patio, concrete pathway)

Interior repairs promised at move in inspection not completed despite numerous follow ups (sinks, carpets cabinets etc) concrete driveway removed and no plans to replace

In a written statement, the Tenant stated that the contractor informed the Tenant that work would be completed in three weeks, as of the beginning of October. In the Tenant's photos it showed the state of incomplete work as of February 2023. This included three fruit trees removed from the backyard, a paved patio removed, a section of fencing removed, and a concrete sidewalk at the rear of the house that was removed. As of the date of their Application in February 2023, this work was still not complete and they were "not provided with any definitive date for promised repairs to the backyard items."

The Tenant provided additional photos that show the concrete driveway, raised planter bed and a "privacy tree" and two other backyard trees had been removed. On the written description of these pictures, the Tenant wrote that they met with the Landlord in October who had told them that "all exterior yards would be put back to move in condition." They noted "being told these will not be replaced as previously agreed."

The Tenant also stated that having a concrete driveway in place was "one requirement for coming into this tenancy." They were not asked about this by the Landlord, or told there would be extra parking space. They stated it was just easier for the Landlord to use gravel instead of re-paving the driveway.

Additionally, as matters of basic repair within the rental unit, the Tenant noted outstanding issues (with some pictures) as: missing closet door; broken glass in the front door; missing glass in the kitchen cupboard door; broken fridge door seal (thereby using more energy) ; and carpeted stairs stated to be too dirty to clean by 2 carpet cleaning companies.

As an update on these issues, stemming from their Application in March, the Tenant noted the following:

- carpet cleaning completed in May; 10 months after they moved in
- lawn completed
- fencing replaced
- sink handle repaired/replaced, took 10 months
- bathroom sink repaired, took 10 months
- kitchen cabinet glass repaired/replaced, took 10 months
- basement floor carpet replaced – took six weeks initially.

In the hearing, the Landlord acknowledged that they told the Tenant about the pending drainage project at the start of the tenancy. This was because of an earlier flood in the home in November 2021. The Landlord could not undertake this work in winter 2021-2022; the previous tenants had known this. The Landlord outlined particulars about the timeline of the project:

- for a four-month period, the contractor could not come when needed; the Landlord's brother is "a reputable contractor for this kind of work"
- when the project started, the perimeter was partially completed
- in the area that featured a trellis, the patio had sunk, and the Landlord built this up again
- the Landlord completed extra work on the right side of the home, where the Tenant parks two vehicles and/or a utility trailer; the Landlord removed a small grass area and widened the driveway for trailer use
- the concrete was broken, so they took this opportunity to correct that issue by putting road base (*i.e.*, gravel) on it – this meant the rental unit property now had extra parking
- what the Tenant refers to as "trees" was actually a shrub; they had a frank discussion about this with the Tenant in advance – the Landlord stated they would replace two trees in the backyard
- the glass replacement for the old front door in place is "hard to obtain" – the Landlord acknowledges that feature is not 100% perfect; however, in terms of a cost-benefit analysis, the door is still fully functional
- the Landlord acknowledged they forget about the door/seal problem with the refrigerator

The Landlord at the close of the hearing presented that the Tenant had a loss of space in the basement area, for which they had a one-time rent reduction of \$1,000

In summary, the Landlord provided that they were trying to maximize the yard space and driveway space to make it better from the Tenant. This is also with the work undertaken to improve drainage. Thus far, the Landlord spent approximately \$25,000 on work.

Analysis

The *Act* s. 32 sets out a landlord's obligation to repair and maintain residential property. This is in a state of decoration and repair that "complies with the health, safety and housing standards required by law." Making a residential property suitable for occupation by a tenant, as an obligation of the Landlord, is with regard to the age, character and location of the rental unit.

Following this, s. 62 grants me, as the delegate of the Director, the authority to make any order necessary to give effect to a parties' rights and obligations under the *Act*, including an order that a Landlord make repairs in line with s. 32.

If I determine that a party has not complied with the *Act* or the tenancy agreement, I may order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

On the larger pieces of the Tenant's Application – that is, the work in the yard spaces/driveway/patio/yard – I find the Landlord has been in recovery or remediation mode on the rental unit property for some time. This work began after the Tenant moved into the rental unit. The Tenant bears the onus of proving that the Landlord is in breach by either not making the property suitable for occupation by a tenant, or that the Landlord was not keeping the property in a suitable state of decoration and repair.

I find the Tenant did not show that the Landlord was not maintaining the rental unit property in a state that did not comply with housing standards, or otherwise made the property unsuitable for occupation. I respect that change had occurred at the rental unit property since the Tenant began living there; however, I find the Landlord's need for remediation, entailing extra work in the yard spaces, outweigh the Tenant's impressions and satisfaction upon moving in to the rental unit. As well, the Landlord is the property owner, and ownership entails the right to reasonably upgrade or modify the rental unit property as the Landlord sees fit.

I address specific pieces of the Tenant's claim, on extant items, with this in mind:

- I find it reasonable that the Landlord modified the driveway. I find the Landlord presented rationale for this change that suggested their aim was the Tenant's own best interests with more available parking space. This may have formed part of the Landlord's thinking; however, I find it reasonable that the Landlord would also aim for expense-savings when making choices on the driveway space.

In reverse, I am not satisfied the Tenant suffered any hardship as a result of the change to the driveway space. I find it not necessary to order the Landlord to return the driveway to its previous state where there has been no detriment to the Tenant, either in terms of parking space, or usability. I find this is no repair to be undertaken; moreover, I find there is no reduction in the value of the tenancy agreement. The Tenant will have to accept the change where the Landlord has not breached any part of the *Act* or the tenancy agreement.

- The Landlord acknowledged that they forgot about the fridge repair item. I order the Landlord to either complete a repair on the refrigerator, or, should the cost of refrigerator parts prove prohibitively expensive (as is often the case) replace the refrigerator with one that will not affect the Tenant's energy expenses, a point raised by the Tenant that I find legitimate and credible. The Tenant did not provide any cost increase to them over the course of the tenancy, and I will assume this issue was in place from the beginning of the tenancy. Without information like this submitted by the Tenant, I order no reduction in rent, with no definite cost-impact on the record.
- The Landlord in the hearing pledged to replace the two trees in the backyard area. I find this is acknowledgement from the Landlord on the Tenant's claim for this specific piece of repair. I order the Landlord to give effect to this pledge.
- The Landlord presented that original glass for the front door was too difficult to obtain. The door is functional, and the Tenant did not present that the cracked glass presented a safety or security hazard. I make no order for specific repair to this distinct item. I find it is a minor aesthetic flaw to a functioning door.
- The Tenant presented different terms on specific pieces of the "paved patio" and "sidewalk" or "concrete pathway" in the hearing. I am not clear on whether that work remains, and there is insufficient visual information or explanation in the Tenant's evidence for me to order that the Landlord must complete such work. The single-image

pictures of a wide angle in the backyard don't show sufficient detail. While the Landlord registered what the Tenant was talking about in the hearing, the Tenant has not presented sufficient evidence for me to order repairs to specific items thereof. There is just a lack of sufficient evidence on this point for me to either order repairs/replacement, or a reduction in rent for any impact this had on the Tenant in their day-to-day life at the rental unit. I dismiss this specific piece of the Tenant's claim, and note again it is the Landlord's right of ownership to determine what any yard space will look like in the future.

I find the other items mentioned by the Tenant were completed prior to the hearing. I have considered whether the prolonged period of no repairs to items in the rental unit (e.g, cupboards and sinks) warrants some form of recompense to the Tenant. There is no record of communication from the Tenant to the Landlord on these items. A rent reduction would be in order where the Tenant presented these items as requiring repair, and then afforded the Landlord ample opportunity to complete repairs. There was no timeline in place or description of the Tenant's communication to the Landlord on these items in order for me to determine that the value of the tenancy agreement was reduced, and thereby award compensation.

Therefore, I dismiss the Tenant's claim for a rent reduction overall.

I order the Landlord to either repair or replace the refrigerator, if not already completed as of the date of this decision. The Landlord must ensure repair or replacement of the refrigerator by July 31, 2023. Should repairs not be completed, the Tenant may seek compensation for any measurable impact a non-efficient refrigerator had on their monthly expenses.

I order the Landlord to replace the trees in the backyard space, as the Landlord stated in the hearing. The Landlord must ensure this replacement by July 31, 2023.

I find it was necessary for the Tenant to bring this Application in order to fully discuss the issue openly with the Landlord, and have some relief granted. I find the Tenant is entitled to recover the Application filing fee they paid for this Application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reasons set out above, I order the Landlord to complete repair or replacement on two discrete items listed by the Tenant in their Application. The Tenant shall recover the cost of this Application from one future rent payment.

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

Dated: July 5, 2023

Residential Tenancy Branch