



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RR, RP, OLC, FFT

On February 6, 2023, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was originally set down for a hearing on June 1, 2023, at 11:00 AM and then was subsequently adjourned pursuant to my Interim Decision dated June 1, 2023. On June 2, 2023, this matter was then set down to be heard on July 7, 2023, at 9:30 AM.

Both Tenants attended the final, reconvened hearing, and Y.X. and H.X. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing package and the parties’ respective evidence was discussed at the original hearing, and there were no issues pertaining to service. As such, both parties’ evidence will be accepted and considered when rendering this Decision.

As was noted in the original hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, the Tenants were advised that the most pressing issues would be addressed, and they outlined five repair issues of consequence. Accordingly, the Tenants' other claims are dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a repair Order?
- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2021, that the rent was currently established at \$2,346.00 per month, and that it was due on the first day of each month. A security deposit of \$1,150.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

At the original hearing, Tenant P.L. advised that they informed the Landlord about the heat not working by text on October 26, 2021, but after it was fixed, it would make a loud banging noise. He stated that the plumber told him that it would be a big project to resolve the banging issue. He testified that they did not force the Landlord to correct this as they wanted to maintain an amicable relationship. However, the noise became more severe in the winter of 2022, so they emailed the Landlord about it in January 2023. He stated that the Landlord did not want to resolve this and suggested that they just turn off the heat instead. He submitted that if the lower unit uses the heat, the banging noise will

be worse. As well, he referenced documentary evidence submitted to demonstrate that the Landlord was aware of this issue and that a plumber will be sent to inspect the problem, but one was never sent.

Y.X. advised that a plumber was sent in October 2021 and that this person stated that it was impossible to locate where the banging noise was coming from. He testified that the Tenants did not make any complaints after this time period, but did complain about the boiler not working in November 2022. He stated that a plumber was sent out to fix the boiler the next day. He advised that when the Tenants complained of the banging noise in 2023, he consulted with two plumbers who both stated that it was impossible to fix; however, he submitted no documentary evidence to substantiate what was reported by the plumbers. As well, he suggested that the Tenants turn off the heat at night and he stated that they were offered space heaters.

At the final, reconvened hearing, P.L. advised that there was a discoloration in the ceiling around the sprinkler head in the rental unit right at the start of the tenancy that was due to a leak in the ceiling. He stated that this issue was mentioned to the Landlord in August 2021, but this dragged on until May 2022, when the Landlord first inspected the issue and cut a hole in the ceiling. He testified that the leak was finally fixed in March 2023, but the hole is still there. He referenced documentary evidence submitted to support this position.

Y.X. stated that it took awhile to fix because the Tenants initially informed him that this was a minor issue, and that they stated that it was “not that big of a deal”. He confirmed that this was fixed in March 2023.

P.L. then referenced a picture submitted as documentary evidence that illustrated the torn, second floor window screen, and Tenant Y.X. advised that the window cannot be opened because of it.

Y.X. stated that he was not aware of this hole, but acknowledged that the Landlord will fix it.

P.L. then referenced pictures submitted as documentary evidence that illustrated a water stain on the ceiling that started in December 2021 that has progressively become worse. He testified that this issue was brought to the Landlord’s attention via email in March 2023, as per the documentary evidence submitted, and that they were told to address this through dispute resolution.

Y.X. advised that the leak has already been fixed and this stain was just discolouration. He stated that the Tenants never mentioned any issue with this since the Application was made. He confirmed that a contractor can be sent out to examine if there is mold in this area.

Finally, the Tenants advised that they first discovered a leak in the balcony in November 2021, and they sent an emergency call to the Landlord. They testified that they used buckets to catch the water in the rental unit, and that it took such a long time for the Landlord to address this issue that they put up their own tarp to mitigate the amount of water that came into the rental unit. They stated that the Landlord eventually built an awning on the balcony on December 24, 2021, and that there have been no issues since.

Y.X. acknowledged that the Tenants reported the leak in November 2021, and that the Landlord sent a professional roofer on December 3, 2021, to assess the situation. He stated that the roofer noted that there was too much rain to fix this in a conventional manner. He testified that the roofer indicated that it was difficult to fix a flat patio and that the best solution would be a patio cover. He then stated that a patio contractor was sent on December 7, 2021, to construct a custom cover for the balcony, and that this was completed on December 24, 2021. He confirmed that there have been no leaks reported since.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain 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.”

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties’ testimonies,

their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenants' claims of there being a loud banging noise when the heat was being used, the consistent and undisputed evidence is that the Landlord has known about this issue since the fall of 2021. When viewing the digital evidence submitted of this noise, I do not find it to be reasonable or acceptable. While Y.X. advised that he consulted with plumbers and they informed him that it was impossible to fix, I note that he has not submitted any documentary evidence to corroborate this. Furthermore, I do not find a suitable solution to this would be to turn down the heat as suggested by Y.X.

Regardless, I note that it is the Landlord's responsibility to maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law. As such, I find that the Landlord is responsible for rectifying this loud, banging issue. As the Landlord has been aware of this ongoing problem for such a significant period of time, I **Order** the Landlord to hire a qualified professional to investigate and assess the nature of this banging noise within two weeks of being deemed to receive this Decision. I further **Order** that the Landlord have the necessary repairs commence, by a qualified professional, within a month of receiving the assessment of the required repairs.

Regarding the Tenants' claim of the sprinkler head issue, I am satisfied that this has been an ongoing problem since the start of the tenancy, that the Landlord was aware of this, and that it has become progressively worse. I also accept that the Landlord finally addressed this issue and then fixed the leak in March 2023. However, it appears as if the hole in the ceiling has not yet been repaired. As it is the Landlord's responsibility to maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, I find that he is responsible for rectifying this issue. As such, I **Order** the Landlord to hire a qualified professional to repair this hole within a month of being deemed to receive this Decision.

With respect to the Tenants' claims of the torn, second floor window screen, given that Y.X. confirmed that the Landlord will fix this, I make no Order pertaining to this issue. Regarding the Tenants' claim of a water stain on the ceiling that started in December 2021, I can reasonably infer that this was likely as a result of the leak in the ceiling that occurred at approximately the same time. While Y.X. claimed that this is just discolouration, given that there was a significant leak in the roof, I do not find that Y.X. has the qualifications to determine that this is nothing more than an aesthetic issue.

Regardless, the Landlord is still responsible for maintaining the rental unit, and I do not find it reasonable for the Tenants to live in a rental unit with an issue that was of no fault of their own.

As there was a substantial leak in the roof, I **Order** the Landlord to hire a qualified professional to investigate and assess the nature of this water stain, and assess if there is any mold, within two weeks of being deemed to receive this Decision. I further **Order** that the Landlord have the necessary repairs commence to the stained ceiling and any mold issue, by a qualified professional, within a month of receiving the assessment of repairs.

Finally, with respect to the Tenants' claim of a water leak in the balcony in November 2021, given that this was repaired eventually in late December 2021 and there have been no issues since, I find that it is not necessary to issue a repair Order for this matter.

As a note, the Tenants may serve a copy of this Decision to the Landlord in a manner in accordance with the *Act* to expedite receipt of this Decision, and consequently the start of the repair Orders. The Landlord is cautioned that failure to comply with the above noted **Orders** could lead to justification in a Tenants' Application for compensation.

Regarding the Tenants' claims for a rent reduction for these five repair issues, I find it important to note that Policy Guideline # 5 outlines a person's duty to minimize loss as follows:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the *Act*, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;

- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

When assessing the Tenants' claims for compensation, I note that these issues have been going on for a significant period of time and the Tenants could have applied for Dispute Resolution had the Landlord not rectified these matters in a timely fashion. Given that the Tenants waited so long to do anything about them, I dismiss their claims for a rent reduction as they did not mitigate any loss. Should the Landlord not comply with the **Orders** for these above matters, the Tenants will then be at liberty to apply for a rent reduction at that point.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee. The Tenants are permitted to withhold this amount from the next month's rent, or otherwise recover it from the Landlord.

Conclusion

The Tenants' claims for repairs are granted, and I **Order** that the Landlord complete the above required actions as soon as is reasonably possible, and in accordance with the above timeframes. These repairs must be fully completed within a reasonable period of time after the work commences.

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: August 2, 2023

Residential Tenancy Branch