



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy, and a request for emergency repairs. The applicant is also requesting recovery of the filing fee.

Background and Evidence

The tenant deducted \$90.72 from her November 15, 2011 rent payment and as a result the landlord gave her a Notice to End Tenancy on November 16, 2011.

The tenant filed a dispute of the Notice to End Tenancy on November 18, 2011 which resulted in today's hearing.

The tenant testified that:

- When she moved into the rental unit there was a strong odour coming from the bathroom, and therefore she spoke to the landlord and the landlord verbally agreed to let her hire a plumber to investigate the problem.
- The landlord verbally told her that she would pay for the cost of the plumber.
- She therefore hired a plumber who came and investigated the problem but could not find a plumbing problem and suggested calling pest-control.
- When she requested that the landlord pay the plumbing bill, the landlord refused to do so and therefore she deducted the cost of the plumber from her November 15, 2011 rent payment.
- She believes she had the right to deduct them money from the rent because this is a health issue and the landlord told her that she would pay for the plumbing bill.

The landlord testified that:

- The tenant moved into the rental unit on September 16, 2011 and the next day called and said she could smell an odour.
- I went to the house that same day and could not smell any odour.
- She told me she wanted to find a plumber to check the sewer and I told her that that did not make sense as the water was flowing in and out of the toilet without a problem.
- I never agreed to let the tenant hire a plumber to investigate the problem, and in fact I informed the tenant that I would have someone come and check out a problem.
- She never agreed to pay the tenant for the cost of the plumber she hired.
- The tenant went ahead and had a plumber come to the rental property without allowing her a chance to check out the problem, and without any authorization to do so.
- Therefore since the plumber was not authorized and she never agreed to pay for the plumber, she does not believe that the tenant had the right to deduct the money from the rent.

- Therefore when the tenant did deduct the cost of the plumber from the rent she gave her a Notice to End Tenancy.
- She therefore believes that this Notice to End Tenancy should be upheld and this tenancy should end.

Analysis

It is my decision that the tenant did not have the right to deduct the cost of the plumber from her rent.

The only time the tenant can unilaterally deduct money from the rent is if she has had to pay for an emergency repair for which she has given the landlord an invoice and which the landlord has refused to pay.

Emergency repairs are very narrowly defined under the Residential Tenancy Act under Section 33 as follows:

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.

Section 33 of the residential tenancy act further states:

(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.

First of all is my finding that the tenant did not give the landlord reasonable time to make the repairs after first discussing the issue with the landlord and secondly I am not convinced that this repair qualified as an emergency repair.

The tenant argued that it was a repair to the plumbing, however even the invoice from the plumber states it is not the sewer, and is possibly a dead animal smell and should be checked by pest-control.

The tenant claims that the landlord verbally agreed to pay for the plumbing bill however the landlord disputes that claim. The burden of proving a claim lies with the person making the claim, and when it is just that person's word against the word of the other that burden of proof is not met.

Therefore in the absence of any proof that the landlord agreed to pay for this plumbing invoice it's my decision that the tenant has deducted this money from the rent without the authorized agent to do so and therefore I will not set aside the Notice to End Tenancy.

Further since this tenancy is ending pursuant to the 10 day Notice to End Tenancy I will not issue any repair orders.

Conclusion

This application is dismissed in full without leave to reapply, and at the request of the landlord I have issued an Order of Possession for 1 p.m. on December 31, 2011.

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: December 06, 2011.

Residential Tenancy Branch