



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MNDCT, ERP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- an Order for emergency repairs, pursuant to section 33.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on October 12, 2018. The landlord confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was deemed served with this package on October 17, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

At the outset of the hearing the landlord testified that the shortened version of his first name was listed in the application for dispute resolution. Pursuant to section 64 of the *Act*, I amended the application for dispute resolution to state the landlord's full first name.

Preliminary Issue- Cancellation of Four Month Notice

In the hearing the landlord withdrew/ cancelled the Four Month Notice. I find that the Four Month Notice is cancelled and of no force or effect.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the claim for emergency repairs is not sufficiently related to the tenant's monetary claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the need for emergency repairs.

The tenant's monetary claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for emergency repairs. I exercise my discretion to dismiss the tenant's monetary claim with leave to reapply.

Issue(s) to be Decided

1. Is the tenant entitled to an Order for emergency repairs, pursuant to section 33 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2017 and is currently ongoing. Monthly rent is \$500.00. A security deposit of \$250.00 was paid by the tenant to the landlord. A written tenancy agreement was not signed by the parties.

Both parties agree to the following facts. On August 4, 2018 a truck crashed into the front of the subject rental property damaging the front wall. The tenant entered into evidence a newspaper clipping showing the truck hitting the subject rental property.

The tenant testified that the entire front wall is pushed in and that the electric baseboard heater has come off the wall. The tenant testified that there is a dinner plate sized hole in the wall which she has boarded up. The tenant testified that as the weather is getting colder the need to repair the damage is growing. The tenant testified that the landlord has received a settlement from ICBC but has not repaired the subject rental property.

The landlord testified that it will cost him approximately \$15,000.00 to repair the subject rental property and that he received substantially less than that from ICBC. The landlord testified that he cannot afford to repair the property, so he plans on selling it without repairing it. The landlord did not enter any physical documentation into evidence.

Analysis

I have examined the testimony and evidence of both parties and make the following findings based on a balance of probabilities.

Section 33(1) of the Act defines emergency repairs as those that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and includes repairing electrical systems and in prescribed circumstances, a rental unit or residential property.

Based on the oral evidence of both parties and the photographic evidence provided by the Tenant above, I find that the repairs being sought from the landlord are emergency repairs.

Section 32(1) of the Act requires a landlord to provide and maintain the residential property in a reasonable state of repair.

Based on the foregoing provisions of the Act, the testimony of both parties and the written evidence of the tenant, I find that the landlord has breached section 32 of the *Act* by failing to make emergency repairs to the rental site. As a result, I order the Landlord to take immediate action to complete the necessary remedial work to the tenant's rental site. The landlord's financial limitations do not diminish his responsibilities under the *Act*.

If the repair work is not completed by January 31, 2019, I find that pursuant to section 65 of the *Act*, the tenant is entitled to receive a rent reduction in the amount of \$250.00 per month effective February 1, 2019 until the repairs are completed. I make no finding on the reduction in the value of the tenancy from August 4, 2018 to present as the tenant has not applied for a rent reduction. The landlord is cautioned that the tenant may apply for further monetary compensation.

If the landlord completes the necessary repairs, I order that the monthly rent for this tenancy reverts to the regular amount established in this tenancy (i.e., currently \$500.00) in the month after the repairs are completed. For example, if the landlord completes repairs by January 14, 2019 the tenant is liable to pay the **normal** amount on February 1, 2019.

Conclusion

The tenant has been successful in her Application.

The Four Month Notice is cancelled and of no force or effect.

The landlord is ordered to complete repairs to the rental unit as laid out above.

If the repair work is not completed by January 31, 2019, the tenant is granted a rent reduction in the amount of \$250.00 per month from February 1, 2019 until the repairs have been completed.

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: November 20, 2018

Residential Tenancy Branch