



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI OLC RR MNDC RP ERP FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 28, 2019. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and first evidence package, sent by registered mail on January 7, 2019. The Tenant also stated that she sent another evidence package to the Landlord by registered mail on January 14, 2019.

With respect to the Tenant's second evidence package, and, as stated in the hearing, Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be **received** by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing (Received by January 14, 2019). Since the evidence is late, I will not consider this portion of the Tenant's late documentary evidence in this hearing.

With respect to the Landlord's evidence, they stated they sent it by email to the Tenant. The Tenant denies getting it. I note email is not an approved and verifiable method of service under the Act. I find the Landlord has failed to sufficiently serve the Tenant with their evidence, and as such, it will not be considered.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not emergency repairs are required and whether or not there are emergency health and safety matters raised on this portion of the Tenant's application. As a result, I exercised my discretion to dismiss all of the grounds the Tenant applied for, with leave to reapply, with the exception of the following claim:

- Is the Tenant entitled to an order requiring the Landlord to make emergency repairs for health or safety reasons?
- Is the Tenant entitled to an order requiring the Landlord to make repairs to the rental unit?

The remainder of the Tenant's application is dismissed, with leave to reapply.

Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make emergency repairs for health or safety reasons?
- Is the Tenant entitled to an order requiring the Landlord to make repairs to the rental unit?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing in relation to multiple different issues with the tenancy. However, in this review, I will only address the facts and evidence which underpin my findings and I will only summarize and speak to points which are essential in order to make my findings about the need for emergency repairs. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Tenant testified that she has been a tenant in this rental unit for a few years now, since sometime in 2016. The Tenant stated that when she moved in, the basement was not safe, and was unfinished. The Tenant stated that there were electrical and plumbing issues, and the area was not finished. The Tenant stated that she had a discussion with the Landlord when she moved in, and he promised to finish it and fix it up so that she could use it. The Tenant stated that this was never done, and the unit is still in disrepair.

The Landlord stated that they never promised to finish the basement and stated that the Tenant agreed to rent the house, as it was, and the basement was never agreed to be finished off. The Landlord acknowledged that there are some deficiencies with the basement but stated that they have recently had the electrical issues resolved, as per Technical Safety BC, and they have also recently had the plumbing issues resolved.

The main issues raised by the Tenant with respect to repairs were surrounding the flawed electrical system, the unfinished basement (with the promise of it being finished after they moved in), and the plumbing issues (flood). The Tenant stated that the electrical repairs have since been completed (as per Technical Safety BC), and it did not appear there was anything further with the electrical that she needed done at this point.

With respect to the plumbing issues, the Tenant stated that on December 6, 2018, there was a plumbing and sewage leak. The Tenant stated that basement flooded and sewage backed up from the septic tank inside the basement, in and around the unfished bathroom, and bedroom. The Tenant noted that there was an issue with the seal on the toilet as well around this time. The Tenant stated that she notified the Landlord of what happened on December 6, 2018, and the next day, the Landlord had a company attend the house to fix the sewage issue. The Tenant stated that there have been no leaks or backups since that day, but stated that the Landlord has still not come by the clean up the spilled sewage or have it professionally dealt with.

The Landlord stated that they had someone come right away to drain and clear out the septic system. The Landlord stated that it has been okay since that time, and stated that they are currently dealing with insurance. The Landlord stated that they were denied coverage for the cleanup just a couple of days ago, and they indicated they have already hired someone to come in the next day to start professional cleanup. The Landlord acknowledged that there was still sewage mess that needed cleaning up, but stated that they are in the process of making this happen, now that they have heard back from the insurance company.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings

First, I turn to Section 33(1) of the Act, which defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

I note that the undisputed evidence is that there was a sewage backup on December 6, 2018. I find this meets the definition of an emergency repair because it was a result of a blocked sewage pipe. I note the Landlord had the sewer line cleared and the septic tank drained on December 7, 2018, so no further orders are required on this matter. However, I note the cleanup from the sewage flooding has still not been completed, in part, due to insurance complications. Although the Landlord has stated there is someone coming to do the cleanup within the next day, I still find it necessary to make an order that this occur, to ensure the rental unit is properly remediated and safe to reside in. I find this order is urgent, given the health risks associated with unremediated sewage waste. I hereby order the Landlord to hire a contractor to professionally remediate any remaining sewage flood residue and debris. I order that they do this within 5 days of receiving this decision.

I also order the Landlord to have the downstairs toilet fixed, as the Tenant stated that this toilet leaks when it is flushed, and could have been a contributing factor to the sewage flood in the downstairs basement (bathroom, laundry area, and bedroom). I order the Landlord complete the toilet repair within 2 weeks of receiving this decision.

With respect to the Tenant's request for the basement to be completed and fixed up as agreed upon, I note the parties dispute that any such agreement existed for these renovations, and repairs. The Tenant, and witness, stated that the Landlord agreed to fix up the basement, so that it could be lived in, at the start of the tenancy in 2016. The Landlord, and witness, stated that the Tenant's rented the house, as is, and they never agreed to fix up the basement. The Landlord stated that it was only ever a storage area. The Landlord stated that the Tenant lived at the house for the last couple of years and now that the flood happened, this basement issue has blown up. After considering the testimony and the evidence presented at the hearing, I find there is insufficient evidence to show that the Landlord promised to build and fix the basement, such that it could be lived in. It appears the Tenant is largely living in the upstairs floor(s). It is not sufficiently clear what the agreement was between the Landlord regarding the renovation and repair of the basement (over 2 years ago), or if there was an agreement. The burden of proof is on the applicant, and in this case, I find the Tenant has failed to demonstrate that she is entitled to an order that the basement, in general, be fixed up.

I find there is no order required for further electrical work, as it appears this issue was recently resolved. I note the Landlord attended to the sewage issue promptly, and restored functionality of the sewer and septic system. However, since the Landlord failed to clean up the spilled sewage, pursuant to section 33 of the Act, I order the Landlord to hire a contractor to professionally remediate any remaining sewage flood residue and debris. I order that they do this within 5 days of receiving this decision. As stated above, I also order the Landlord to have the downstairs toilet fixed, and any leak fixed, within 2 weeks of receiving this decision.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was partly successful in this hearing, I also

order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution. The Tenant may deduct \$100.00 from one future rent payment, in full satisfaction of the cost of the filing fee.

Conclusion

The Tenant's application for emergency repairs, is granted, as laid out above.

The Tenant may deduct \$100.00 from one future rent payment, in full satisfaction of the cost of the filing fee.

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: January 30, 2019

Residential Tenancy Branch