



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 19, 2018. Both parties confirmed the landlord served the tenant with her submitted documentary evidence via Canada Post Registered Mail on January 25, 2019. Neither party raised any service issues. As such, I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for recovery of costs for emergency repairs and the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2017 on a one year fixed term tenancy ending on October 31, 2018 as per the submitted copy of the signed tenancy agreement dated October 16, 2017. The monthly rent is \$1,200.00 payable on the 1st day of each month and a security deposit of \$600.00 was paid on October 16, 2017. Both parties confirmed that the tenancy has already ended.

The tenant seeks a monetary claim of \$1,050.00 for recovery of emergency repairs for a broken sump pump. The tenant claims that during the tenancy the toilet became inoperable and the landlord was notified. Both parties confirmed that this was the only toilet the tenant had access to in the rental unit. The landlord attended the rental unit to inspect the toilet. Both parties agreed that discussion took place in which the landlord cautioned the tenant that if the tenant were found at fault for the inoperable toilet, the tenant would be responsible for any costs, if not the landlord would bear all of the costs.

The tenant argued that the landlord gave her two options which were to resolve it herself or hire a plumber to inspect and fix it. The landlord argued that she did not provide any options to the tenant.

Both parties confirmed that the tenant wished to think over what she should do and would inform the landlord after. The tenant decided to book a plumber for the next day to inspect and repair the toilet, but did not inform the landlord until the plumber was on site. The landlord argued that the tenant failed to allow the landlord an opportunity to inspect and repair the toilet within a reasonable time herself.

In support of this claim the tenant has provided a copy of:

Plumbing Invoice dated August 8, 2018 for \$1,050.00.

The invoice noted “checked power going to old pump, power plant had power, snaked sump & cleaned around bottom” ...”tried to get old pump running. The invoice notes “Did not start” and “Had to replace with new as old one was burnt out.” The tenant stated that the invoice notes a “broken sump pump”.

Analysis

Section 33 of the Act describes “emergency repairs” as those 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 purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

In this case, I find that an inoperable toilet is considered an emergency as it is the only toilet available to the tenant in the rental unit as confirmed by the landlord. The dispute is if the tenant complied with the Act.

Section 33 (3) states in part that a tenant may have emergency repairs made only when all of the following conditions are met:

Emergency repairs are needed.

The tenant has made at least 2 attempts to telephone, at the number provided, the person identified as the landlord as the person to contact for emergency repairs.

Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The tenant confirmed in her direct testimony that the landlord was notified of the toilet problem and after the landlord attended the tenant was considering her options after the discussions with the landlord. The tenant confirmed that she booked a plumber to attend and make any necessary repairs. The tenant also confirmed that she did not notify the landlord prior to booking the plumber. In this case, I find that the tenant failed to meet the conditions of having emergency repairs made. Although there is a clear need to have the inoperable toilet fixed, the tenant did not notify the landlord of her intent to hire a plumber to fix the issue nor did the tenant give the landlord a reasonable amount of time to make the repairs. As such, the tenant's request for recovery of emergency repairs and recovery of the filing fee are dismissed.

Conclusion

The tenant's application is dismissed.

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: February 08, 2019

Residential Tenancy Branch