



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on August 20, 2019, (the "Application"), seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order for emergency repairs; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's Agent K.B. attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that he served the Application and documentary evidence package to the Landlord in person on August 29, 2019. The Landlord's Agent confirmed receipt. The Landlord's Agent testified that she served the Tenant with the Landlord's documentary evidence by registered mail on October 3, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order for the Landlord to make emergency repairs to the rental unit, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2016. Currently, the Tenants pay rent in the amount of \$1,540.00. The Tenants paid a security deposit in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00, which the Landlord continues to hold.

The Tenant testified that he has experienced issues with the air conditioning in his rental unit since the start of the tenancy. The Tenant stated that from June to September in 2017, 2018 and 2019 the temperature in the rental unit consistently exceeded 28 degrees Celsius during these months. The Tenant stated that he suffers from sleep apnea and has had to resort to sleeping in a tent on his balcony or stay elsewhere during these periods.

The Tenant stated that the Landlord has made previous attempts to repair the broken air conditioning unit to no avail. The Tenant stated that the Landlord had previously hired plumbers who were underqualified to complete the repairs. The Tenant stated that during this past summer, the Landlord hired a qualified technician to inspect the air conditioning unit, who determined that a part needed to be fabricated and installed to repair the air conditioning unit. The Tenant stated that to date, the air conditioning has not been fixed, however, the Tenant did state that the technician was meant to repair the air conditioning unit sometime this week.

The Tenant stated that he is not certain that the repair will suffice and feels as though the entire air conditioning unit should be replaced to ensure no further loss is experienced by the Tenants.

In response, the Landlord's Agent stated that they did not receive notification from the Tenant regarding the broken air conditioning unit until July 28, 2019. The Landlord's Agent stated that she immediately took action to have the air conditioning repaired by a qualified technician. The Landlord's Agent stated that she received a quote on August 1,

2019 at which point it was determined that a part needed to be fabricated to repair the air conditioning unit. The Landlord's Agent stated that waiting for the part to arrive has contributed to the delay in having the air conditioning unit repaired. The Landlord's Agent stated that the qualified air conditioning technician has been attempting to make arrangement to attend the rental unit to complete the necessary repairs, however, a date and time has yet to be established.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 32 of the Act,

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...

Section 33 of the Act states; "**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, ...

In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the lack of air conditioning in the rental unit merits an order for emergency repairs. As such, I dismiss Tenants' claim without leave to reapply.

I do however accept that the parties agreed that the air conditioning in the rental unit is not functioning. I am satisfied that the Landlord has employed a qualified air conditioning service technician who is meant to attend the rental unit this week to repair the air conditioning unit.

I order the Landlord to undertake the required repairs as soon as possible, but no later than November 30, 2019. Should the Landlord not comply with this order, the Tenant is at liberty to reapply for monetary compensation, including a reduction of monthly rent, under the *Act*.

As the Tenants were unsuccessful with their Application for emergency repairs, I find that they are not entitled to the return of their filing fee.

Conclusion

The Tenants have provided insufficient evidence to demonstrate the lack of air conditioning in the rental unit merits an order for emergency repairs. As such the Tenants' Application is dismissed without leave.

Regardless, the Landlord is ordered to complete the regular repair to the air conditioning unit on or before November 30, 2019.

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: October 21, 2019

Residential Tenancy Branch