



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order for emergency repairs to the rental unit, and to recover the cost of her filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to an Order for Emergency Repairs?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2013, and has a current monthly rent of \$988.00. The Parties agreed that the Tenant paid the Landlord a security deposit of \$475.00 and no pet damage deposit.

During the hearing, the Tenant advised that she is moving out of the rental unit in mid-March, 2020.

The Tenant testified that emergency repairs are needed in the rental unit to repair a leak in the ceiling. She said the water damage to the rental unit has extended down the wall, running by an electrical outlet. She said the problem: "...actually started before anything in my emails. I moved in, in 2013. In around 2015, I first noticed a small water spot in the ceiling the size of a dime. [The Landlord] said they had patched the ceiling once in the past, due to a leak. He told me it would get fixed very soon." In the hearing, the Tenant said that nothing has been done to repair the damage inside the rental unit caused by the leak. The Tenant detailed her other attempts to have the problem repaired by having sent emails to the Landlord, which included, but were not limited to the following:

- September 23, 2016 – re having to use buckets to catch the water;
- August 27, 2017 – an email re mildew and mould starting;
- December 13, 2018 – email re cracking and leaking;
- February 17, 2019 - for an update;
- July 28, 2019 – for an update; and
- January 20, 2020 – water started leaking through the electrical outlet.

The Tenant submitted a number of photographs of the area of the rental unit affected by the leak. These photographs revealed mould in the door frame, water bubbles around a light switch, a large, dark-coloured water bubble of about a foot square in the ceiling above the refrigerator, and water bubbles in the wall.

In the hearing, the Tenant explained how this has affected her living conditions. She said:

It has been stressful beyond belief to put it lightly. The mould is so bad for our health. I have had buckets catching water since 2016. It has been a big fear. I have a fridge, microwave... if it got into the electrical, it could cause a fire. I'm afraid the area above the fridge will break through.

It smells so bad of mould and mildew. We stopped having company over for the past couple of years. Both my son and I have started having migraines – about once a month, leaving me bed-ridden for three days.

The Landlord said he determined that the leak was caused by water flowing from a deck above and running into the rental unit. He said he tried to fix this by putting a better covering on the deck; however, this did not stop the leak.

The Landlord said that he has arranged for a contractor to repair the damage that is causing the leak, and that he will arrange for the repairs inside the rental unit immediately thereafter, once the source of the water is eliminated.

In answer to the question of why it took so long to arrange for this repair, the Landlord said that the Tenant's initial photographs of the damage did not appear as severe as they do in the photographs submitted to the RTB from January 2020. He said there was a heavy snowfall in January, which led to this increased damage. The Landlord also said that he is a student and is away from the city a fair amount. The Parties agreed that the Landlord gave his brother's telephone number to the Tenant, in case of emergencies. However, the Tenant said that the Landlord's brother rarely answers his telephone or responds to her. The Landlord said he cannot comment on whether his brother answers his telephone or not.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 33(1) of the Act sets out what "emergency repairs" means. It says that emergency repairs are "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property." The Act also states that emergency repairs are 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(2) of the Act requires the Landlord to “post and maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.” Responding promptly to emergencies helps preserve the residential property for the landlord, as well as responding to the situation the tenant faces from the emergency.

Landlords’ and tenants’ rights and obligations for repairs are set out in sections 32 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the 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 65 of the Act states that if the Director finds that a landlord or tenant has not complied with the Act, the regulation or a tenancy agreement, the Director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy. The Tenant noted in the hearing that there is another dispute resolution hearing scheduled for the Parties in April 2020, in which the Tenant seeks compensation from the Landlord regarding this matter.

Based on the evidence before me overall, I find that the Tenant notified the Landlord of the leak in September 2016, when she advised him that she was using buckets to catch

the leaking water. I find that the Landlord has had four years to repair this leak and the resulting damage in the rental unit. I find that the Landlord has been unreasonable in the amount of time he has taken to make the needed repairs.

Based on all the evidence before me, overall, I find that repairing the source of the leak above the unit and the affected areas inside the unit are necessary to make the rental unit suitable for occupation. I find that the Landlord breached his responsibilities under section 32 of the Act in not addressing this damage to the residential property that I find has affected the Tenant's use of the rental unit.

Section 62(3) of the Act states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I Order the Landlord, at his own cost, to have a certified, licensed professional inspect and repair the damage to the residential property that caused the leak in the rental unit within three weeks of this Decision. This is consistent with the Landlord's evidence that he arranged for a contractor to attend the residential property to initiate repairs in early March 2020.

I Order the Landlord, at his own cost, to have a certified, licensed professional inspect the damage from the leak in the rental unit within three weeks of the date of this Decision, and to have the professional repair the damage in the rental unit from the leak, as recommended by the professional, by March 31, 2020.

As the Tenant is successful in this Application, I award her with recovery of the \$100.00 Application filing fee. The Tenant is authorized to decrease one upcoming rental payment by \$100.00 in satisfaction of this award.

The Landlord is cautioned to make himself better acquainted with his responsibilities as a Landlord under the Act before attempting to rent the suite to anyone else. It is the Landlord's responsibility to be available or to have someone else readily available to answer and address questions from tenants about emergencies in the rental unit. If the Landlord's brother cannot handle this responsibility, then it is up to the Landlord to find someone else who will.

Conclusion

The Tenant is successful in her Application. The Landlord failed to comply with his obligations under sections 32 and 33 of the Act to maintain the rental unit in a state of repair that complies with the health, safety and/or housing standards required by law, and which makes it suitable for occupation by a tenant.

The Landlord is Ordered to repair that part of the residential property that caused the leak, resulting in the water damage to the rental unit. The Landlord is Ordered to repair the inside of the rental unit, bringing it to a state of suitability for occupation by a tenant by March 31, 2020.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 26, 2020

Residential Tenancy Branch