



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANTERN PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRT

Introduction

This hearing dealt with the adjourned Application filed by the Tenant under the Residential Tenancy Act (the “Act”). The Tenant applied to recover their costs for emergency repairs made during the tenancy, pursuant to section 33 of the *Act*. The matter was set for a conference call.

The Tenant and the Agent for the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were each provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they had exchanged the documentary evidence that I have before 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 to be Decided

- Is the Tenant entitled to a monetary order to recover their costs for emergency repairs completed during the tenancy?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on August 1, 2010, that the rent had been \$950.00 per month and was to be paid by the first day of each month. The parties also agreed that the tenancy had ended on February 22, 2018, in accordance with the Act. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that they had told the Building Manager, in early December 2017, that there had been a dripping sound and a strange smell coming from under the bathroom sink in their rental unit. The Tenant testified that the Building Manager attended the rental unit but had found no problem and left.

The Tenant testified that the smell persisted and that they started to become ill due to the smell. The Tenant stated that they again advised the Building Manager that there was a problem and requested that they repair the rental unit. The Tenant testified that the Building Manager became upset with them and refused to make the requested repairs.

The Tenant testified that in January 2019, they believed that the smell was caused by a slow water leak, in the pipe behind the wall, and that the leaking water had caused mould to form, and that the mould was making them sick.

The Tenant testified that this was a plumbing repair and was, therefore, an emergency repair and that they had made two verbal requests to the Landlord to make the needed repairs, that the Landlord had refused. The Tenant testified that on January 3, 2019, they decided they had waited long enough for the Landlord to complete the repair, so they called a plumber to fix the problem. The Tenant is requesting the recovery of their emergency repair costs, in the amount of \$115.50. The Tenant submitted a copy of the repair invoice from the plumber into documentary evidence.

The Landlord testified that they have no personal memory of this incident as it had happened over two years ago but that from the evidence submitted by the Tenant, they could see that they had been advised of the requested repair on January 15, 2019, and that they had sent a repair team to the rental unit on January 16 & 17, 2020 and that no water damage or mould was found in the rental unit.

The Landlord testified that they acted immediately to repair the unit after they received the Tenant's written request to repair the unit. The Landlord argued that they are not responsible for the requested repair costs, as it was the Tenant's choice to complete the repairs before they notified the Landlord. The Landlord testified that the Building Manager the Tenant testified about no longer worked for the Landlord and that the

Tenant's claims of a verbal request to repair the rental unit in December 2017 could not now be investigated by the Landlord. The Landlord also testified that the requested repair was not an emergency repair as defined by the *Act*.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenant has claimed that they completed emergency repairs to the rental unit during their tenancy and that they are requesting the recovery of their costs for those repairs pursuant to section 33 of the *Act*. Section 33 of the *Act*, set the circumstances in which a repair is deemed an emergency, stating the following:

Emergency repairs

33 (1) *In this section, "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, or*
 - (vi) in prescribed circumstances, a rental unit or residential property.*

Section 33 (c) of the *Act* deems "major leaks in pipes" as an emergency repair. I have reviewed the testimony provided by the Tenant during this proceeding and the plumbing invoice submitted into documentary evidence, and I find that the description of the repair to have been at most a slow minor leak in a pipe and not a major leak as required for a claim pursuant to section 33 of the *Act*.

Specifically, I noted that the length of time that had passed, over a month, from when the Tenant claims they first reported the needed repair to the Building Manager and when they decided to complete the repair themselves. If this had been a "major leak," I

find that there would have been considerable damage to the rental unit after a month of neglected repairs. However, I accept the Tenant's evidence that shows that when the Landlord went into effect repairs on January 16, 2020, no need for repairs was found. Overall, I find that that the repair the Tenant is claiming did not meet the definition of an emergency repair.

As the Tenant has failed to provide sufficient evidence to show an emergency repair had been required to the rental unit, I must dismiss the Tenant's application for the recovery of their costs for emergency repairs pursuant to section 33 of the Act.

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Conclusion

I dismiss the Tenants application without leave to reapply.

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: July 31, 2020

Residential Tenancy Branch