



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ERP, FF

Introduction

This hearing was scheduled to hear the tenant's application for an Order requiring the landlord to make emergency repairs for health and safety reasons. The tenant was also seeking recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard.

The tenant's application indicated that the dispute address was the upper and basement floors of the residential property. The tenant confirmed that she is the tenant of the basement unit. The tenant cannot make an application with respect to a rental unit occupied by someone else and I amend the tenant's application to identify the basement unit as the dispute address.

Issues(s) to be Decided

1. Has the tenant established that emergency repairs are required and if so that the landlord has failed to take adequate steps to remedy the issue?
2. Award of the filing fee.

Background and Evidence

The tenant's application for emergency repairs pertains to squirrels gaining access to the building and the potential for the squirrels to chew threw electrical wires and cause a fire hazard. At the commencement of the hearing, the parties were asked if the squirrel issue had been resolved. The landlord testified that screening and a one-way door had been installed over the entry point. The tenant wished to proceed with the hearing in order to recover the filing fee paid for this application and address areas of concern with respect to the evidence submitted by the landlord. The hearing proceeded.

The tenant testified that in February 2009 Orkin pest control services attended the property in response to a request for service to deal with rats and during that service call squirrel activity in the building was indicated. The tenant claimed that she told the landlord's realtor of the squirrel issue; however, the tenant did not indicate the date the realtor was advised or that the realtor advised the landlord of the squirrel issue. The tenant testified that she did not try to tell the landlord of the squirrel problem directly as the landlord had not returned her telephone calls in the past. The tenant acknowledged that most of the contact made with the realtor and the pest control company was initiated by the tenant in the upper rental unit.

The landlord testified that she had no knowledge of a squirrel problem until she heard about it from Orkin on April 9, 2009. The landlord testified that the tenant never contacted her with respect to a squirrel problem. The landlord confirmed that she had not changed her telephone number or address and did not appoint another person to act as an agent for her as a landlord. The landlord claimed that the realtor did not tell the landlord about reports of a squirrel problem.

The landlord provided as evidence a letter from Orkin. The letter indicates that the landlord contacted Orkin on April 14, 2009 to schedule a service call to deal with the squirrels. The letter from the Orkin technician also indicates that he did not tell the tenant that the squirrels would definitely chew through wires and quickly become a fire hazard. The landlord testified that the services of Orkin were scheduled for April 23, 2009; however, due to unforeseen circumstances involving the Orkin technician the appointment was rescheduled for April 29, 2009. The technician installed the screen and one-way door on April 29, 2009.

Two “Emergency/Follow Up Reports” from Orkin were dated April 8, 2009 and provided as evidence. The tenant claimed that the two versions of the April 8, 2009 report called into question the landlord’s credibility. The landlord provided as evidence for the hearing the two different versions of the report. The landlord explained that she was told by Orkin that the upstairs tenant was given the original report prepared by the technician and that the Orkin employee wrote another report which was provided to the landlord.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Without evidence to the contrary, I accepted the landlord’s explanation with respect to the two different Orkin reports dated April 8, 2009. The April 8, 2009 Orkin report provided as evidence by the tenant and one of the copies provided as evidence by the landlord indicate that the Orkin technician noted the entry point of the squirrels and the appropriate remedy for dealing with the squirrels. I find the Orkin report to be consistent with the landlord’s testimony that she became aware of the squirrel problem upon receiving a report from Orkin. I find the tenant’s disputed verbal testimony to be insufficient to show that the tenant had previously notified the landlord of the squirrel problem.

I find the landlord acted in reasonably prudent manner by scheduling a service call on April 14, 2009. Since the landlord has sufficiently addressed the squirrel problem, I do

not find it necessary to Order the landlord to perform emergency repairs or any other repairs to deal with the squirrel problem.

Emergency repairs are defined by the Act and must meet certain criteria. Where a tenant believes emergency repairs are required, the Act requires that the tenant make at least two attempts to contact the landlord by telephone. By the tenant's own admission, the tenant did not attempt to contact the landlord at least two times by telephone with respect to the squirrel problem. From the letter from Orkin, I do not find sufficient evidence that the squirrel problem constitutes an emergency repair.

Where a tenant wishes the landlord to perform repairs other than emergency repairs, and the tenant is seeking compensation, a tenant should be able to prove, based on a balance of probabilities, that a landlord was aware of the repairs required. In this case, the tenant should be able to show that the landlord was notified of the problem and the landlord has been provided an opportunity to address the repair issues before the tenant initiated the Application for Dispute Resolution. As the tenant requested that she recover the cost of the filing fee from the landlord, the tenant must satisfy me that she did whatever was reasonable to notify the landlord of the squirrel problem and the landlord failed to take action in a reasonable amount of time. The tenant claimed that she had advised the landlord's realtor of the squirrel problem; however, I do not find sufficient evidence that the landlord's realtor is an agent for the landlord with respect to tenancy issues. Although the tenant alluded to a breakdown in communication between the parties, it is unclear why the tenant did not try to notify the landlord in writing. Rather, the first attempt to make written contact with the landlord concerning the squirrel issue was by way of serving the landlord with the Tenant's Application for Dispute Resolution.

In summary, I found that the Tenant's Application for Dispute Resolution was made after the landlord had already scheduled a service call to deal with the squirrels. I find that this application was made by the tenant without the tenant taking reasonable steps to advise the landlord of the squirrel issue or enquiring with the landlord as to whether the landlord had taken steps to address the issue. Therefore, I do not grant the tenant's request for recovery of the filing fee.

In light of the above findings, the tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed 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: May 05, 2009.

Dispute Resolution Officer