



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes ERP, FF

Introduction

This hearing dealt with the tenant's application for emergency repairs and recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions and to respond to the submissions of the other party. Neither party had provided documentary or written submissions to me within the time limits required under the Rules of Procedure thus all of the submissions were verbal.

At the beginning of the hearing the landlords indicated that the landlords had filed a cross application and both applications should be heard together. Upon further investigation and enquiry, I determined that the landlords' application is still pending and the tenants have not yet been served with hearing documents by the landlords. Accordingly, I could not join applications and this decision pertains to the tenant's application only.

Issue(s) to be Decided

Does the rental unit require emergency repairs and is it necessary to issue repair orders to the landlord?

Background and Evidence

The co-tenancy commenced August 2009 and the tenants are required to pay rent of \$800.00 on the 1st day of every month. Two co-tenants and three children reside in the rental unit.

Both parties agreed the tenant called the city building inspector to the residential property. As a result, the building inspector and the fire department attended the unit on September 21, 2010 and November 19, 2010. On November 22, 2010 the building inspector wrote to the owner of the property informing the owner that a health and safety inspection took place at the property and that the building and property is maintained to acceptable health and safety standards.

The tenant submitted that she has been verbally complaining to the landlords about mould in the rental unit since the tenancy began. The tenant submitted that a roof leak caused water to penetrate the walls in the bathroom and master bedroom. Although the roof has been repaired the moisture in the walls was not remediated. The tenant claims that the formation of mould has caused her and her family to be frequently ill with respiratory problems.

The tenant acknowledged that she was present when the building inspector attended the property; however, the tenant submitted that the inspector did not investigate her complaints of mould. Rather, the inspector was concerned with structural issues and issues in the unit below hers.

The tenant also pointed out that the building inspector's letter refers to a street address of 9536 when her rental unit is 9534A. The landlord explained that the legal address of the property is 9536 for all four units located in the building and that 9534A is only a mailing address. The tenant appeared to understand and accept the landlord's explanation.

The landlords submitted that a restoration company was hired by the landlords at the suggestion of the city. The landlords explained that the restoration company took moisture readings but did not produce a written report of their findings. The tenant submitted that she had no knowledge of a restoration company being in her unit.

The landlords submitted that they were prepared to remediate the bathroom when other repairs were underway at the property, including an offer to put the tenants in a hotel, but that the tenant rejected the landlords' offer. The tenant responded by stating that she did not accept the offer because she was concerned about the security of her possessions if she went to stay in a hotel and permitted repairs to be completed in her absence.

After much discussion, the parties were able to reach a consensus with respect to making repairs to the rental unit. The landlords stated that they are willing to coordinate repairs to be made to the rental unit and indicated approximately four weeks would be needed to accomplish this work. The landlords stated that they are willing to provide the tenants with use of the bathroom located in the vacant rental unit located under the tenants' rental unit during the repair process. The tenant made assurances she will not interfere with the landlords' ability to make the necessary repairs.

Analysis

Section 32 of the Act provides that 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.

Section 33 of the Act defines emergency repairs as:

- (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.

In this case, I found the evidence concerning the condition of the rental unit to be underwhelming. Other than verbal testimony, the tenant did not present other evidence to demonstrate the likelihood of mould in the residential property. However, it would appear the landlords had received complaints of mould or moisture in the unit as the landlords claim to have had a restoration company take moisture readings in the unit. I find the landlords could have gone to greater efforts to obtain a report or written verification from the restoration company to demonstrate the moisture readings obtained for the unit.

Given the above finding and upon hearing that the landlord had previously offered to put the tenants up in a hotel while repairs were made to the bathroom, I find on the balance of probabilities that the bathroom requires repairs to address moisture or mould issues.

I am also reasonably satisfied that the adjacent master bedroom wall may also be impacted by mould or moisture.

In light of the above, and in recognition of the consensus reached during the hearing, I **hereby issue the following ORDERS:**

1. **The landlords are to make sufficient and appropriate repairs to remediate mould from the bathroom and master bedroom within four weeks of the date of this decision.**
2. **The landlords are to provide a bathroom for the tenants' use in the vacant rental unit below the tenants' rental unit when the tenants' bathroom is unusable.**
3. **With reasonable prior notice, the landlords must inform the tenants of preparations they need to make with respect to moving their possessions from the affected areas and the tenants must comply with these instructions.**
4. **The landlords must comply with section 29 of the Act by obtaining verbal consent of one of the tenants before entering the rental unit or give the tenants a written 24 hour notice of entry.**
5. **The tenants must not unreasonably withhold consent to enter the unit or otherwise interfere with the landlords' ability to carrying out the above orders.**

I order that the parties share in the cost of filing this application. In satisfaction of this award, **the tenants are hereby authorized to deduct a total of \$25.00 from rent otherwise payable** to the landlords.

Conclusion

Orders have been issued to both parties. I have awarded one-half of the filing fee to the tenants. The tenants are entitled to withhold \$25.00 from rent payable to the landlords in satisfaction of this award.

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, 2011.

Residential Tenancy Branch