



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, LRE, OPT, AAT, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order compelling the Landlord to make emergency and other repairs to the unit – Section 32;
2. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70;
3. An Order of Possession to the unit – Section 54;
4. An Order allowing access to the unit or site – Section 70;
5. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

At the onset of the Hearing, the Landlord requested that the Tenant’s application be dismissed as he was not served the application for dispute resolution and notice of hearing. The Landlord states that he was emailed by the Tenant about the dispute and obtained the copies himself from the Residential Tenancy Branch. The Tenant states that two weeks after the tenancy started, the Landlord advised her that since he was going to be out of the country for the next seven months, his mailing address would be the same address as the Tenant and that when she asked him again for a proper mailing address in mid August 2011 the Landlord again refused to provide her with any address other than the address for the unit she is renting. The Tenant states that she sent the documents to the only other address she could find online. The Landlord does not dispute that the Tenant did not have an address for him other than that of the

Tenant's and states that since the Tenant's application, a realty agent has been arranged to carry out the Landlord's obligations for the duration of the Landlord's absence from the country and that the realtor's address should be used now by the Tenant.

Accepting that the Landlord did not provide the Tenant with a proper address and considering that the Landlord was informed of the dispute by the Tenant, I find that the Tenant made her best efforts to serve the Landlord. Considering that the Tenant's application has merit and that the Landlord received the documents in mid August directly from the Residential Tenancy Branch and has had time to respond and make submissions through the provision of evidence in advance of the hearing, I find that the Landlord will not be subject to any prejudice by obtaining the documents directly from the Residential Tenancy Office. I and therefore deny the Landlord's request for a dismissal of the Tenant's application.

During the Hearing, the Tenant stated that the Parties reached an agreement concerning the storage of the Landlord's belongings at the unit and site while the Landlord is out of the country. The Tenant states that it was agreed that the Landlord would store his belongings in the basement and his two cars outside the unit for the duration of the Landlord's time out of the country. The Landlord confirmed this agreement. As a result the Tenant waives the claims made for an order of possession of the unit or site, the claim for access to the unit of the site and the claim suspending or setting conditions on the Landlord's right to enter the rental unit.

Issue(s) to be Decided

Is the Landlord required to make emergency or other repairs?

Is the Tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on July 30, 2011. Rent in the amount of \$1,900.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$950.00, a pet deposit in the amount of \$950.00 and a non-refundable deposit of \$150.00.

The Tenant states that on the second day of the tenancy an outer hose was used to wash the deck and it caused a flood into the unit. The Tenant states that she immediately informed the Landlord who told her to stop using the pipe and not tell anyone. The Tenant further states that the Landlord told the Tenant that she was responsible for drying the rugs and making repairs to the walls. The Tenant states that the plumber who was called in to inspect the problem on August 14, 2011 informed the Tenant that a pipe in the wall was broken causing the water to leak inside the unit. The Tenant states that this pipe has not been repaired to date and that while the carpet is now dry the carpet and the underlay smells of mould.

The Landlord states that this is not an emergency repair as there are no leaks, that follow-up of the incident occurred on August 14, 2011 and that repairs will be undertaken. The Landlord agreed that he originally told the Tenant to dry out the carpets and states that the Tenant is responsible for minor repairs such as using soap and water to wash off the mould on the walls, which the Landlord states covers only a small area. The Landlord states that as he is an absent Landlord he could reasonably expect the Tenant to carry out such small repairs however the Landlord states that he now has a property manager who has been instructed to make repairs.

The Tenant states that at move-in the gas fireplace was not working and the Landlord agreed to have it in working order for the start of the tenancy. This agreement to repair was noted in the move-in condition report submitted by the Tenant as evidence. The Landlord states that the fireplace will be repaired.

The Tenant states that the microwave stopped working and that she informed the Landlord a week ago that this occurred however the Landlord has not attended to this repair. The Landlord states that this will be repaired.

The Tenant states that the Landlord charged her a \$150.00 non-refundable fee for securing the tenancy agreement. The Landlord states that the Tenant may reduce her next rent payable by this amount.

The Tenant claims the amount of \$150.00 per month until the repairs to the unit are done.

Analysis

Section 33 of the Act sets out the meaning of emergency repairs as repairs that are urgent, necessary for the health or preservation or use of the residential property and made for the purpose of repairing items including the major leaks in pipes or the roof. Accepting the evidence that the pipe that requires repair no longer leaks, I find that the repair of this pipe is not an emergency within the meaning of the Act.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. As the carpets are now dry from the leak, and as the Tenant has not provided evidence that the underlay is mouldy as a result of the leak, I find that no repairs to the carpet are required. Accepting the undisputed evidence that there is mould on the surface of the walls however, and given that the Tenant is not responsible for this damage, I find it unreasonable that the Landlord require the Tenant to clean these walls or make any other repairs necessary to the walls. I therefore direct the Landlord to make any necessary repairs to the wall within a reasonable period of time. Accepting that the Landlord will have the walls and pipe repaired within a reasonable time, I dismiss the claim of the Tenant in relation to these repairs.

As the tenancy agreement includes use of the gas fireplace and microwave and as the fireplace has not been working from the beginning of the tenancy and the dishwasher has not been working for approximately two weeks, I direct the Landlord to make the repairs to the fireplace immediately and to the dishwasher as soon as reasonably possible. AS the fireplace has not been operational since the beginning of the tenancy, I find that the Tenant is entitled to the amount of **\$100.00** for the two months that the fireplace has not been working. Should the Landlord fail to make the repairs to the fireplace and the dishwasher by the end of October, 2011, I order the Tenant to reduce the monthly rent for November 2011 by the amount of \$75.00 for the fireplace and \$75.00 for the dishwasher. These amounts are to be deducted for each month thereafter that the Tenant does not have use of the fireplace and dishwasher.

As the Tenant's application has had merit, I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of \$150.00. I order the tenant to reduce the next monthly rent payable by this amount.

Conclusion

I Order the Tenant to reduce the next monthly rent payable by \$150.00.

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 4, 2011.

Residential Tenancy Branch