



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for emergency repairs.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submission.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant is entitled to recover the cost of emergency repairs?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2012.

The Tenant stated that when he was moving property into the rental unit on July 31, 2012 he determined that the hot water tank was not working; that he reported the problem to an individual who identified himself as a friend of the Landlord on July 31, 2012; and that he met with this individual on August 01, 2012, at which time the individual told him that he could repair the hot water tank and that he would be reimbursed for those costs.

The Agent for the Landlord stated that the individual who identified himself as the Landlord's friend did have authority to authorize the Tenant to repair the hot water tank and the Landlord does not dispute that the Tenant should be compensated for the costs of these repairs.

The Landlord and the Tenant agree that the Tenant had the hot water tank repaired, at a cost of \$380.80. The Tenant stated that he forwarded two invoices for these repairs to the Landlord, via email, on August 05, 2012. The Agent for the Landlord stated that he understands the Landlord received the invoices.

The Landlord and the Tenant agree that on November 01, 2012 the Agent for the Landlord provided the Tenant with permission, via email, to reduce his rent for November by \$380.80 in compensation for the repairs made to the hot water tank and by \$100.00 for cleaning the chimney. The Tenant stated that he had verbal permission to retain more than this amount from his rent for November. The Agent for the Landlord stated that he did not have permission to retain more than that amount. The Tenant stated that he only paid \$686.25 in rent for November.

The Landlord and the Tenant agree that the Landlord authorized the Tenant to have the chimney cleaned; that the Landlord informed the Tenant that he would be reimbursed for the cost of the cleaning; that the Tenant paid \$100.00 to clean the chimney; and that on August 02, 2012 the Tenant emailed a copy of the receipt for the cleaning to the individual who identified himself as a friend of the Landlord.

The Tenant is seeking compensation for a variety of administrative costs because he does not believe that he was reimbursed for these repairs in a timely manner. The Agent for the Landlord stated that the Landlord issued cheques for the repairs to the hot water tank and for cleaning the chimney on August 23, 2012. Copies of three cheques for these repairs were submitted in evidence. The Tenant argued that the cheques could have been written at any time and do not constitute proof of payment.

The Agent for the Landlord stated that the cheques were mailed to the Tenant on August 23, 2012 and have never been returned to the Landlord. The Tenant stated that the cheques were not received. The Tenant submitted a copy of an email from the Landlord, dated September 02, 2012, in which the Landlord declared that three cheques had been sent to the Tenant on August 23, 2012 and that if the Tenant did not receive those cheques he could reduce his September rent payment by \$481.80.

Analysis

Section 33(1)(ii) of the *Residential Tenancy Act (Act)* identifies emergency repairs, as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential unit, and made for the purpose of repairing damaged or blocked water or sewer pipes or plumbing fixtures. I find that a hot water tank is a plumbing fixture that is necessary for the health of people living in the rental unit and that a hot water tank that is not working should be urgently repaired.

Section 33(3) of the *Act* stipulates that a tenant may have emergency repairs made when the repairs are needed, the tenant has provided the landlord with at least 2 attempts to telephone a representative of the landlord to report the need for repairs, and

the tenant has subsequently given the landlord reasonable time to make the repairs. The Landlord does not dispute that the hot water tank needed repair or that the individual who identified himself as the Landlord's friend had authority to represent the Landlord in this matter. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary from the individual who identified himself as the Landlord's friend, I find the problem with the hot water tank was reported to this individual in a manner that exceeds the requirements established by the legislation. As there is no dispute that this individual authorized the Tenant to repair the hot water tank on August 01, 2012, I find that it was reasonable for the Tenant to proceed with the repairs at that time.

Section 33(5) of the *Act* stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement and provides the landlord with a written account accompanied by a receipt for the amounts claimed. There is no dispute that the Tenant has complied with this section and that the Landlord is obligated to compensate the Tenant for the money he paid to repair the hot water tank.

As the Landlord and the Tenant agree that the Agent for the Landlord gave the Tenant written permission to reduce his rent for November by \$380.80 in compensation for repairing the hot water tank and that the Tenant reduced his rent payment for November by more than this amount, I find that the Tenant has been fully compensated for the repairs made to the hot water tank. I therefore dismiss the Tenant's application for a monetary Order for emergency repairs to the hot water tank.

Section 33(1)(iii) of the *Act* identifies emergency repairs, as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential unit, and made for the purpose of repairing the primary heating system. I find that the Tenant submitted no evidence to establish that the fireplace was designed to be used as the primary heating system for rental unit and I cannot, therefore, conclude that the cleaning of the chimney constituted an emergency repair. In reaching this conclusion I was heavily influenced by the fact that the chimney did not pose an imminent risk to the Tenant's safety, as he could have elected not to use it until it had been deemed safe. I therefore dismiss the Tenant's application for a monetary Order for emergency repairs to the chimney.

I note that I would have dismissed the Tenant's claim for a monetary Order for these repairs even if cleaning the chimney constituted an emergency repair, as the Tenant has been fully compensated for this repair. This conclusion is based on the undisputed testimony that the Agent for the Landlord gave the Tenant written permission to reduce his rent for November by \$100.00 in compensation for this expense and that the Tenant reduced his rent payment by more than this amount.

I find that the Landlord has made reasonable efforts to compensate the Tenant for the costs of repairing the hot water tank and cleaning the chimney. In reaching this conclusion I was influenced, in part, by the Agent for the Landlord's testimony that payment for these expenses was mailed to the Tenant on August 23, 2012. Although

the Tenant does not acknowledge receiving that payment, and I have no reason to discount this testimony, I find it entirely possible that the cheques were not delivered as a result of human error. In reaching this conclusion I was more heavily influenced by the email submitted in evidence by the Tenant, in which he was given permission to reduce his September rent by \$481.80 as compensation for these expenses. I was further influenced by section 33(7) of the *Act*, which authorized the Tenant to deduct the cost of emergency repairs from rent if the Landlord did not reimburse him for the cost of those repairs. As the Landlord had complied with his agreement to pay the Tenant for these expenses and his obligation to compensate the Tenant for emergency repairs by September 02, 2012, I find that the Tenant is not entitled to further compensation.

I specifically note that in the absence of evidence to show that the Landlord failed to comply with the *Act*, there is nothing in the *Act* that requires a Landlord to pay administrative costs arising from repairs made to the rental unit by the Tenant.

Although the Tenant applied to recover the fee for filing this Application for Dispute Resolution during the hearing, I declined to consider this request as he did not make application for this fee on the Application for Dispute Resolution.

Conclusion

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: November 15, 2012.

Residential Tenancy Branch