



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking a monetary for the cost of emergency repairs in the amount of \$1,809.77 and recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Has the tenant met the burden of proving her claims?

Background and Evidence

The evidence is that this tenancy began on May 1, 2012. The tenant submits that they have now given their notice and will be vacating the rental unit by March 1, 2013.

The tenant submits that a condition inspection report was not prepared at the start of this tenancy. The tenant says that the landlord verbally agreed that due to “poor maintenance” the tenant could do some repairs and renovations. The tenant submitted that they did some painting for which they were reimbursed. However, the tenant submitted that the rental unit was half carpet and half laminate flooring and the carpet in the basement had a bad smell and was wet. The tenant says he asked the landlord to come over to inspect the premises but the landlord advised the tenant that if she did not like it she could move.

The tenant attended to replacing the carpets believing it to be an emergency situation and fearing for her health. The tenant has submitted an invoice from an unidentifiable source for removing the carpeting and underlay, laying new laminate flooring and baseboards with a total amount of \$1,809.77, the sum the tenant now seeks to recover.

The landlord submits that while he did agree that the tenants could paint, he never agreed that they could do further work. The landlord submits that he has a contractor who attends to repairs at the rental unit. The landlord submits that he has never received any invoice for repairs performed by the tenant and has never been informed of any emergency repairs required.

The landlord agrees that he refused to attend the rental unit because the tenant's boyfriend called him to demand he come over but would not tell him why. The landlord said that he refused to come over and agrees that he told the tenant's boyfriend that if he did not like the place they could vacate.

Analysis

The *Residential Tenancy Act* identifies emergency repairs and sets out how they are to be handled. It says:

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.

And:

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In this case the repairs claimed are for replacement of carpets which are not identified as an emergency repair under the *Residential Tenancy Act*. While the tenant says the carpets presented a health concern because they were wet, the tenant has supplied insufficient evidence to support this claim. Further, even if the repairs were of an emergency nature as defined by the Act the tenant has failed to show that she followed the steps set out in Section 33 above such as informing the landlord of the repairs being

undertaken to allow him to take the repairs over and/or supplying with landlord with copies of the invoices for the costs incurred.

Overall I find that the tenant has failed to show that there were emergency repairs necessary.

Conclusion

The tenant's claim is dismissed.

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 26, 2013

Residential Tenancy Branch

