



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for cause, and for a monetary order to recover the cost of emergency repairs.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary Issue – April 11, 2013

At the outset of the first hearing the tenant stated she no longer is requesting an order to cancel the notice to end tenancy.

This matter was adjourned to provide both parties a fair opportunity to present evidence regarding the emergency repair.

Preliminary Issue – May 13, 2013

At the outset of the hearing the tenant stated she was unable to access the landlord's digital evidence. The digital evidence was not submitted in a format that could be read by the tenant or by the branch. As a result, the digital evidence was excluded.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for emergency repairs?

Background and Evidence

The tenancy began in 2004. Rent in the amount of \$500.00 was payable on the first of each month. A security deposit of \$250.00 was paid by the tenant.

The tenant testified that during her eight year tenancy the hot water tank has never been replaced and on February 24, 2013, at approximately 6:00 pm the hot water tank ruptured. The tenant stated at 6:30 pm she placed a telephone call to the landlord at the number provided and no one answered the telephone and no answering service came on. The tenant stated that at approximately 8:00 pm she placed a second telephone call to the landlord, and again no one answered and no answering service came on.

The tenant testified that she then called a certified plumber to secure his services for the next morning February 25, 2013, to have a new hot water tank installed. The tenant stated she paid the invoice left by the plumber in the amount of \$1,288.00. Filed in evidence is a copy of the invoice.

The tenant testified after the work was complete she sent the landlord a letter with the invoice, requesting reimbursement for the repair. Filed in evidence is a copy of the letter.

The landlord argued that the tenant did not make any attempts to contact them regarding the repair. The landlord stated their answering machine was working and they also have called display and at no time on February 24, 2013, did the tenant attempt to reach them.

The landlord testified they first heard of the repair when they received a letter from the tenant in the mail with a copy of the invoice.

The landlord testified that they were not given any opportunity to have the work completed and they would have been able to replace the hot water tank at a far lower cost. The landlord stated that they also had planned that when the gas hot water tank needed to be replaced, that they were going to replace it with a 110 volt tank, and they would have been able to do the installation of the tank themselves saving additional costs. Filed in evidence is an internet article lookup, for an electric water heater. Filed in evidence is an advertisement for sale of a used natural gas hot water tank.

The landlord testified that when they went to the property after receiving the letter, the tenant told him that she did not have time to call them as she had to go to work and just ordered the work to be done.

The landlord testified that they should not be required to compensate the tenant as the tenant failed to comply with the Act, by failing to contact them or by giving them a reasonable amount of time to make the repair.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 33 of the Act, 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.

In this case, I accept the rupture of the hot water tank would be considered an emergency repair.

The evidence of the tenant was that she telephoned the landlord at 6:30 pm and again at 8:00 pm on February 24, 2013, and was unable to reach the landlord. The evidence was there was no answering service available. This was denied by the landlord. The evidence of the landlord was that they first learned of the repair when they received a letter from tenant.

The letter submitted as evidence, reads in part, "The hot water tank burst and I had it replaced February 25, 2013."

[Reproduced as written]

In this case, the letter from the tenant does not refer to any prior attempts to reach the landlord, and I find it would have been reasonable if those attempts were made, as alleged, to have noted them in her letter.

Even if I accept the tenant's evidence that she telephoned the landlord twice, which I do not, the Act states the tenant has to make at least two attempts, which is the minimum number and following those attempts, the tenant must give the landlord a reasonable time to make the repairs.

In this case, the evidence of the tenant was she called at 6:30 pm and 8:00 pm and then hired a repair person to attend first thing the following day. The tenant did not make any further attempts to contact the landlord. I find that by not making further attempts to contact the landlord and by having the hot water tank replaced the next morning, the tenant did not give the landlord reasonable time to make the repairs. As a result, I find the tenant has not complied with sections 33(b) and (c) of the Act.

However, I find under section 91 of the Act, the common law respecting landlords and tenants would apply here as it would be unfair to the tenant that the landlord would benefit from this repair, when the hot water tank was over eight years old and was not damaged due to the action or neglect of the tenant.

In this case, the tenant has submitted an invoice for the repair in the amount of \$1,288.00, and it was not denied by the landlord that the tank was required to be replaced.

The evidence of the landlord was that they would have been able to have the replace the water tank at a lower cost if they were given that opportunity as required.

The landlord has submitted as evidence a document that suggests that he could have purchased an electric hot water tank for \$52.96. However, upon examining the document it indicates the status of this tank as discontinued and does not indicate that this tank was available. The landlord further submitted as evidence a document that suggests that he could have purchased a used gas hot water tank for \$30.00. However, I note that tank is a model from 2004 and the useful life span of the tank is limited. I find the landlord has failed to provide a reasonable comparison of the repair completed.

In this case, the landlord has received the benefit of having a new hot water tank installed. Under the Residential Policy Guideline #40, a domestic hot water tank has a lifespan of ten years, giving the landlord many future years of use, at the expense of the tenant, creating unfairness to the tenant and results in an unjust enrichment to the landlord.

Therefore, based on the balance of probability, I find the tenant is entitled to recover half of the money she paid to make the repair in the amount of **\$644.00**.

I find that the tenant has established a total monetary claim of **\$699.00** comprised of the above described amount and the \$50.00 fee paid for this application.

Conclusion

The tenant is granted a monetary order in the above amount.

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 15, 2013

Residential Tenancy Branch

