



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord complete repairs and emergency repairs.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing the landlord submitted that he did not believe he had a tenancy with the applicant. The landlord submits that the rental unit had been rented to another person who had sublet the unit to the applicant. The landlord submitted into evidence a copy of an order of possession dated October 29, 2012 against the original tenant and all occupants.

The landlord testified that when he went to enforce the order of possession the applicant, who was occupying the rental unit at the time, convinced the landlord to allow her to stay in the rental unit. The applicant paid \$1,200.00 per month since that time to stay in the unit.

The landlord also submitted receipts for the duration of this arrangement with the applicant for \$1,200.00 for each of the months citing "for use and occupancy only". The landlord submits that he was advised four times by Residential Tenancy Branch staff that he could do this and not re-instate the tenancy.

As the previous tenancy had included a different person as the tenant I find that when the landlord agreed to allow this applicant to remain living in the rental unit and to pay him \$1,200.00 the applicant and the landlord entered into a new tenancy agreement distinct and different, including the fact that it was with another party, than the one that the landlord had just ended by obtaining an order of possession.

As such, the use of the phrase “for use and occupancy only” on the rent receipts issued by the landlord to this new tenant has no meaning whatsoever.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to have the landlord complete repairs and emergency repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenant began paying rent to the landlord in October 2012 in the amount of \$1,200.00 due on the 1st of each month on a month to month basis.

The tenant submits that she has requested the landlord by way of a letter dated October 1, 2013 that the landlord repair the front porch; stairs; exterior door; and the wall in a bedroom that is adjacent to a portion of the building where a fire had caused damage a year and a half ago. The tenant provided a copy of the letter and the landlord acknowledged he received the letter.

In regard to the stairs, the landlord testified that he does not believe there is a problem. In regard to the exterior door the landlord says that there is no problem with the door as he is only a couple of years old and when he saw it in July 2013 (the last time he was at the rental unit) there was no problem with it.

The landlord also testified that he told the tenant to go ahead and fix it. He stated that he did not tell the tenant that he wouldn't pay for the repair, however he also indicated that he thought it was the tenant who caused the damage and he wasn't sure he should have to pay for it. The landlord testified that the picture submitted by the tenant is not of the door the rental unit.

The landlord also testified that he told the tenant to put a piece of plywood on the porch floor to fix it if there were any problems with it. The landlord confirmed that neither he nor his contractor, who he states was at the rental unit a couple of weeks ago to do other repairs, have investigated any of the problems identified by the tenant since she has made the complaint in the October 1, 2013 letter.

The landlord states that he has not repaired the fire damage because he has not settled things yet with his insurance provider. He states that his provider had arranged for a contractor to complete the work last May but that the contractor fell through and nothing has been settled with the insurance provider since then.

Analysis

Section 32(1) of the *Act* requires a landlord to 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 for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety or anyone or for the preservation or use of the residential property, and are made for the purpose or repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

While the tenant has provided no repair requests that fall under the category of emergency repairs, I dismiss that portion of her Application and the remainder of this decision will deal with the repair requests only.

As there is no disagreement from either party that the damage in the bedroom that was adjacent to the fire requires repair I order the landlord begin the repair immediately. Despite the landlord's difficulty with his insurance provider, I find the tenant should not be subjected to any portion of a home that remains unrepaired for a year and a half, specifically when failure to make that repair may render the room nearly unusable.

While I am not completely satisfied, based on the evidence submitted, that there is a need for repairs to be made to the porch; stairs; and exterior door I find the fact the landlord has not even investigated the complaint by inspecting the areas himself or by having a contractor investigate them on his behalf is unacceptable and is contrary to his obligations under Section 32(1).

Based on the above, I order the landlord must hire a certified and licensed contractor to assess the condition of the stairs; porch and exterior door of the rental unit, as identified by the tenant and provide a report from the contractor to the tenant no later than January 25, 2014. I also order that the landlord make whatever repairs are recommended by the contractor no later February 28, 2014.

I also note that should the landlord fail to comply with any of these orders the tenant is at liberty to file a new Application for Dispute Resolution seeking compensation for the landlord's failure.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment in satisfaction of this claim.

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: January 10, 2014

Residential Tenancy Branch

