



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, RR

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 for emergency or other repairs – Section 32; and
2. An Order for a rent reduction - Section 72.

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

Preliminary Matter

At the outset of the Hearing the Landlord confirmed that he understood the Tenant’s application to include a claim for a rent reduction.

Issue(s) to be Decided

Are emergency or other repairs required?

Is the Tenant entitled to a rent reduction?

Background and Evidence

The tenancy started on November 1, 2014. Rent of \$1,370.00 is payable monthly. The rental unit includes a dishwasher and garburator.

The Tenant states that on the evening of November 24, 2014 the dishwasher started to leak onto the floor. The Tenant states that she stopped the machine, noticed water filling in the sink and turned on the garburator following which the water in the sink drained. The Tenant states that she notified the Landlord immediately and placed containers under the water dripping from

the dishwasher onto the floor. The Tenant states that a plumber attended the next evening, drained the sink and repaired the drain. The Tenant states that within a couple of days the flooring started to lift and separate in the areas of the water leakage. The Tenant states that she immediately notified the Landlord, the Landlord did nothing and the damage has since worsened. The Tenant states that the flooring is dangerous for her 3 year old child to walk on and that an elderly family member slipped on the damaged area. The Tenant seeks an order for the Landlord to repair the flooring and an order for a rent reduction of \$370.00 until the repairs are completed. The Tenant states that the amount of rent reduction is based on the loss of half the kitchen floor area and a 7 foot walkway. The Tenant provided a copy of the plumbers work order.

There is no dispute that the plumber repaired the sink drain line and noted in its work order that there was no significant cause for the blockage and appeared to be the result of a basic build-up. The Landlord states that the Tenant caused the damage to the floor by failing to report that the sink was draining slowly. The Landlord states that the work order indicates that the Tenant knew the sink was draining slowly from the beginning of the tenancy. The Landlord states that had he been informed he would have repaired the slow drain and the overflow from the dishwasher would never have occurred. The Landlord states that he has a further report from the same plumber indicating that the blockage that was located 15 feet down the drain line. The Landlord states that the previous tenant informed the Landlord that there were no drainage problems during their tenancy. The Landlord states that although the Tenant identified areas where the flooring was damaged that all the flooring would have to be replaced. The Landlord had no response to the Tenant's claim for a rent reduction.

The Tenant states that although the sink would drain slowly from the onset of the tenancy the problem was always resolved when the Tenant turned on the garburator. The Tenant states that she had no idea that there was any greater problem with the drain other than needing to use the garburator.

The Landlord states that repairs to the unit will commence regardless of the outcome of the Tenant's application.

Analysis

Section 32 of the Act provides that emergency repairs are 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.

While the repair of the flooring may be considered necessary for the preservation or the use of the residential property, as it is flooring, there is no emergency. Further as there are no repairs that are required for the plumbing, I find that the Tenant has not substantiated an order for emergency repairs and I dismiss this claim

Section 32 of the Act provides that a landlord must provide and maintain residential property in a suitable state and that, although a tenant of a rental unit must repair damage they have caused, a tenant is not required to make repairs for reasonable wear and tear. It is clear that the sink was slow to drain and given the plumbing evidence, I find that the cause of the backup was due to buildup over time. Given this buildup and considering the problem was present from the onset of the tenancy I accept that the Tenant could not have reasonably anticipated or known of any greater problem after use of the garburator remedied the slow drain. I cannot find therefore on a balance of probabilities that the Tenant was responsible for the drainage on the floor and the subsequent damage to the flooring.

Based on the undisputed evidence that the flooring requires repairs and acknowledging the Landlord's intention to make the repairs I find that the Tenant is entitled to an order that the Landlord make these repairs as soon as is reasonably possible. Accepting the Tenant's evidence that the unrepaired floor reduces the use and value of the unit I find that the Tenant is also entitled to a rent reduction until the repairs are completed. As the Landlord made no objection or gave any response to the amount claimed by the Tenant I find that the Tenant is entitled to a rent reduction of \$370.00 per month or a daily amount of \$46.70 ($12 \times \$1,370.00/352$) from January 21, 2015 to and including the day repairs are complete. The Tenant may apply the reduction for each month to the next month's rent payable.

Conclusion

I Order the Landlord to repair the flooring as soon as is reasonably possible.

I grant the Tenant a rent reduction as set out above.

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 23, 2015

Residential Tenancy Branch

