Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the tenants' application to recover the cost of emergency repairs. One of the co-tenants and the tenants' legal counsel appeared at the hearing on behalf of the tenants.

The tenants had identified two co-landlords in filing their application. I heard that one of the respondents (referred to by initials JL) was the owner of the property and the other respondent (referred to by initials RC) was an employee, or former employee, of the realty company that prepared documents for the sale of the subject property from the tenants to the current owner. Hearing packages were sent to both JL and RC via registered mail on July 22, 2015 using the address of the realty company. Both registered mail packages were successfully delivered by Canada Post although the person who signed for the registered mail packages was neither JL nor RC.

Another person was in attendance at the hearing (referred to by initials YL), claiming he was requested to observe and record the proceedings on behalf of the owner of the property. YL stated that he did not have authorization to make any submissions or provide responses on behalf of the owner. Given there appeared to be some representation on part of the owner, I accepted that JL had been sufficiently served with notification of this proceeding. However, I expressed reservations as to the standing of RC as a landlord in the absence of any documentation before me that would point to RC being an agent of the owner or otherwise having standing as a landlord. The tenant, through his counsel, stated that they would withdraw their claims against RC and proceed against JL. I amended the application accordingly.

YL enquired as to whether he could make an audio recording of the proceedings. I informed the parties that such recordings are prohibited under the Rules of Procedure. Rule 6.11 and 6.12 prohibit parties from recording the proceedings except where done by a Court Reporter and a request for a Court Reporter must be received at least seven (7) days before the scheduled hearing. The landlord had made no such request before

the scheduled hearing. Accordingly, I informed YL that he may make notes during the hearing and that my decision would also form a record of the proceedings.

The tenant's counsellor also requested the application be amended to correct the spelling of the last name of the landlord. The tenant's counsel referred to a contract of purchase and sale agreement for the subject property that he had before him as being the source of the correct spelling. It sounded as though two letters in the landlord's last name had been transposed in filing the application and I permitted the amendment.

Issue(s) to be Decided

Have the tenants established an entitlement to recover the cost of emergency repairs from the landlord?

Background and Evidence

I heard that ownership of the subject property, a house, transferred from the tenants to the current owner effective October 31, 2013 with an agreement that the tenants would continue to rent the property for another year in exchange for rent in the total amount of $42,000.00 that was deducted from the sale proceeds. Accordingly, the tenancy ran from November 1, 2013 through to October 31, 2014.

The tenants seek to recover the cost of three repairs made to the property during the tenancy. Below, I have summarized the tenant's submissions.

Repair to heating system
The tenant submitted that on April 2, 2014 the heating system stopped working. The landlord was not contacted before the female tenant proceeded to call a repair company who attended the property on the same day and made the necessary repair. The invoice issued by the repair company on April 2, 2014 indicates the board in the boiler was replaced at a total cost of $945.00 including parts, labour and tax.

Repair to sewer line
The tenant submitted that on May 31, 2014 sewage was discovered in the basement and garage. The landlord was not contacted before the female tenant proceeded to call a plumber who attended the property on the same day. With respect to the cause of the sewer back-up the tenant initially testified that the cause of the sewage back up was attributable to faulty storm systems in the area where the property is located. Then, the tenant changed his testimony to say the back-up was caused by roots.

The plumber's invoice is dated May 31, 2014 and indicates the sewer line was inspected with a cable camera and that a blockage was found at approximately 34 feet down the line. The blockage was toilet paper and was cleared by a cabling machine. The plumber pointed to the likely cause of the blockage as being a low quality toilet and recommenced installation of a better quality toilet. The plumber charged $509.25 for the services provided.

Repair to kitchen sink faucet

The tenant submitted that on or about February 19, 2014 the tenants noticed that the kitchen faucet was not shutting off completely. The tenant described the flow from the faucet as being more than a drip but not a heavy flow. The landlord was not contacted before the female tenant called a plumber who attended the property on February 20, 2014. An attempt was made to find replacement parts but the search was unsuccessful. As such, the faucet was replaced at a copy of $948.13 including parts, labour and tax. I noted that the cost of the faucet was $560.03 and that seemed expensive. The tenant submitted that the new faucet was selected by the female tenant but that it was of similar type and quality as the former faucet.

The tenant testified that the landlord was notified of the above-described repairs in giving the invoices to RC near the end of the tenancy. I heard that RC took the invoices from the tenants but that payment was not made to the tenants.

I asked the tenant the reason the landlord was not contacted when repairs were necessary to which the tenant responded that "at the start" the tenants were told to make repairs and submit receipts. I had to ask for the identity of the person who made those statements to which the tenant responded "that lady" who prepared the sales agreement for the property.

Documentary evidence provided for this proceeding consisted of the three repair invoices described above.

Analysis

Upon consideration of everything presented to me I provide the following findings and reasons.

Under section 33 of the Act a tenant may be entitled to recover costs incurred by the tenant to make emergency repairs. Below, I have reproduced section 33 for the parties' reference.

Emergency repairs

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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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.

[reproduced as written with my emphasis underlined]

Where a tenant has repairs made without first notifying the landlord of the issue and giving the landlord the opportunity to take reasonable action, the landlord is deprived of the opportunity to make the repair(s) the landlord determines necessary and appropriate in the circumstances by a person selected by the landlord. Accordingly, section 33(3) requires the tenant to make at least two attempts to contact the landlord and give the landlord a reasonable amount of time to respond. Failure to give the landlord this

opportunity disentitles the tenant to seek recovery of emergency repair costs as seen under section 33(6).

In this case, the tenant acknowledged that there was no attempt to contact the landlord, or an agent for the landlord, about the malfunctioning heating system; the blocked sewer line; or, the kitchen faucet not shutting off completely before the tenants proceeded to have the repairs made. The tenant did not make any submissions that the tenants did not have contact information for the landlord or an agent for the landlord.

During the hearing, the tenant made statements suggesting the landlord may have waived entitlement to be contacted before the tenants make repairs or that the landlord had pre-authorized the tenants to make repairs to the property during their tenancy. I noted that the tenants did not make any such suggestion in filing their application and I proceed to consider whether I can rely upon the tenant's verbal statements made during the hearing.

Upon consideration, I find that the tenant's verbal testimony to be insufficient to find it likely that the landlord waived entitlement to be contacted before repairs were made or pre-authorized repairs and agreed to pay for any repairs made by the tenants for reasons provided below.

Firstly, in general it is very unusual for a landlord to pre-authorize a tenant to make unspecified repairs and agree to pay for any associated cost, especially without any restrictions or limitations, as to do so would be akin to giving the tenant a signed blank cheque. Occasionally, such arrangements are seen where the parties have such a relationship were a high level of trust has already formed. However, the tenant did not indicate that there were any restrictions or limitations imposed upon the tenants with respect to making repairs. Nor, did the tenant indicate the tenants and the landlord had a relationship where trust had already formed. Accordingly, I viewed the tenant's statements concerning this position with a high level of skepticism.

Secondly, I found the tenant's testimony vague and the tenant only provided further details when I made further enquiries and even at that the description of the person that allegedly gave the tenants authorization was "that lady".

Thirdly, I found the accuracy of the tenant's memory questionable. To illustrate: the tenant provided changing testimony as to the reason for the blocked sewer line: faulty storm/sewer infrastructure in the area and then roots in the sewer line; yet, the plumber pointed to a low quality toilet as being the likely cause. The tenant made no submissions concerning the toilet.

In light of all of the above, I find the tenants have not established an entitlement to recover amounts under section 33 of the Act; that the landlord had pre-authorized and agreed to compensate the tenants for any repairs they made; or, any other basis under the Act to be compensated for repairs they took upon themselves. Therefore, I dismiss the tenants' application in its entirety.

Conclusion

The tenants' application has been 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: January 08, 2016

Residential Tenancy Branch