



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, OLC, PSF, RP, RR, FF

Introduction

On September 1, 2016, the Tenant applied for dispute resolution seeking the following:

- an order to make emergency repairs to the rental unit.
- for an order that the Landlord make repairs to the rental unit.
- for an order that the Landlord to comply with the *Residential Tenancy Act (the Act)*, regulations, or tenancy agreement.
- for an order that the Landlord provide services or facilities required by law.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing I clarified the Tenants claims within his application and advised him to provide testimony to address his claims. The Tenant confirmed that he did not provide any written or documentary evidence in support of his application.

The Landlord provided 8 pages of evidence including black and white photocopies of three photographs taken of the rental unit. I find that the quality of the photocopied

photographs is too poor to provide any probative value and I have not considered them in this decision.

Issues to be Decided

- Is the Tenant entitled to an order that the Landlord to comply with the Residential Tenancy Act (the Act), regulations or tenancy agreement.
- Is the Tenant entitled to an order for the Landlord to make repairs and/or emergency repairs to the unit?
- Is the Tenant entitled to compensation for damage or loss?
- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on October 16, 2013, and is currently a month to month tenancy. Rent in the amount of \$750.00 is due on the first day of each month. A security deposit of \$375.00 was paid by the Tenant to the Landlord.

The Tenant testified that some repairs to his rental unit have been completed but the bathroom is still being repaired. He testified that in December 2015, he contacted the building manager and reported that there was water coming from the ceiling fan area on the bathroom ceiling of his rental unit. The Tenant submits that there was no communication from the Landlord on having the problem addressed. The Tenant submits that the problem should have taken 1 month to fix.

The Tenant submitted that the unit was not up to health standards. He submitted that the Landlord's inability to get contractors to get the work done is not his problem. The Tenant testified that there may not be a leak in the ceiling but there was water coming through the ceiling fan area. The Tenant submitted that the fan is always on when he uses the shower. The Tenant testified that mould could be present and could result in skin irritation and heavy breathing.

The Tenant testified that the taps in the bathroom and the entry door of the unit also required repair.

The Tenant testified that he wants the bathroom ceiling to be repaired due to the discoloration on the ceiling and he wants to recover the cost of the application fee.

The Landlord responded by testifying that she acknowledges that the repair has taken a long time. She testified that on two separate occasions she sent a contractor to the rental unit to inspect the complaint but she never heard back from either contractor.

She testified that a contractor is now working on the issues reported by the Tenant. She testified that the door handle on the Tenants door was fixed, and that it was just a loose screw that needed to be tightened. She testified that a new countertop has been installed in the kitchen and a new sink and tap has been installed in the bathroom.

The Landlord testified that the contractor looked at the ceiling and found no structural damage, but agrees that the ceiling fan needs to be replaced. The Landlord testified that the ceiling fan will be replaced.

The Landlord testified that there was nothing present that affected the Tenant's use of the unit. The Landlord points out that the Tenant has not provided any evidence to support his claims.

In response the Tenant acknowledged that he did not provide any evidence but he feels the Landlord has breached her responsibility to ensure the rental unit meets health, and safety standards.

Section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Section 33 of the Act states that "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.
- (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.

Section 65 of the Act states that if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Analysis

Residential Tenancy Policy Guideline #16 Claims in Damages states that if a Tenant is deprived of the use of all or part of the premises through no fault of their own, the Tenant may be entitled to damages, even where there has been no negligence on the part of the Landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

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

The Tenant's application includes a request for a rent reduction, and an order for the Landlord to provide services and facilities required by law. The Tenant did not indicate any amount of compensation within his application. In addition, the Tenant did not address his request for a rent reduction in his testimony. The Tenant did not provide any testimony or evidence that he has suffered a loss of use, or a loss of a service or facility of the rental unit. I find that the Tenant did not suffer a loss of use of the rental unit, or a loss of a service or facility and I dismiss these claims.

The Tenant provided no evidence that he made emergency repairs to the unit or paid any amount of money for emergency repairs to the unit. In addition the Tenant did not provide sufficient evidence to establish that an emergency repair to the rental unit was urgent, or necessary for health and safety reasons. The Tenant suggested that mould could be present and could result in skin irritation and heavy breathing, but here was no testimony or evidence to support the actual presence of mould in the bathroom. The Tenants request for an emergency repair, or compensation for an emergency repair, is dismissed.

I find the 10 months it took for the Landlord to deal with the repairs in the Tenant's unit is unreasonable. The Tenant and the Landlord disagree on whether the ceiling in the

bathroom shower needs to be replaced. The Landlord testified that a contractor found no structural damage to the ceiling. There is insufficient evidence from the Tenant to prove that the ceiling needs to be replaced. When two parties provide conflicting testimony or evidence, the burden of proof rests with the Applicant. I order the Landlord to complete the bathroom repairs by replacing the ceiling exhaust fan and deal with any discoloration on the ceiling by October 21, 2016. If the Landlord fails to have the repairs completed beyond October 21, 2016, the Tenant may seek compensation.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful in his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I authorize the Tenant to deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application was partially successful. I order the Landlord to complete the bathroom repairs stated above no later than October 21, 2016.

I grant the Tenant the amount of \$100.00. I authorize the Tenant to deduct the amount of \$100 from one (1) future rent payment.

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: October 06, 2016

Residential Tenancy Branch

