



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, OLC, MNDC,

Introduction

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

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

The tenant testified the named landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on November 7, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Section 59(2) of the *Act* states that an Application for Dispute Resolution must be in the applicable approved form, include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and be accompanied by the fee prescribed in the regulations.

Section 59(5) allows the director to refuse to accept an application for dispute resolution if in the director's opinion, the application does not disclose a dispute that may be determined under this Part, the applicant owes outstanding fees under this *Act* to the government, or the application does not comply with subsection (2).

I note that while the tenant identified in her Application for Dispute Resolution that she was seeking a monetary order she did not explain anywhere in the details of dispute or her evidence what she was claiming the compensation for. As such, I have determined this portion of her Application for Dispute Resolution does include the full particulars of the dispute as required under Section 59(2) of the *Act*.

As a result and pursuant to Section 59(5) I decline to adjudicate this part of the tenant's claim. I note the tenant remains at liberty to file another monetary claim against the landlord for this compensation at a future date.

I also note that during the hearing the tenant indicated that she was seeking to have the landlord restricted from entering into her rental unit without providing adequate notice of his intent to do so. However, the tenant did not indicate in her Application that she was seeking any orders to restrict the landlord's access to the rental unit. As such, I have not considered that issue as part of this decision.

Regardless, I remind both parties that Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry; the landlord has an order from the director authorizing the entry; the tenant has abandoned the rental unit; or an emergency exists and the entry is necessary to protect life or property. Section 29(2) stipulates that the landlord may inspect a rental unit monthly.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to complete repairs and emergency repairs, pursuant to Sections 32 and 33 of the *Act*.

Background and Evidence

The tenant testified that her tenancy began in October 2015 as a month to month tenancy for the monthly rent of \$550.00 due on the 1st of each month with a security deposit of \$700.00 paid.

The tenant submitted that she has repeatedly asked the landlord to fix the following items:

- Heat in the living room; her daughter's bedroom; and her son's bedroom is not working and that the heat in her bedroom is working but it is very slow in heating up the room;
- Carpet is 23 years old and is stained and smells;
- Stove in the kitchen is broken;
- The closet doors are broken;
- The bathroom sinks required replacement;
- The landlord replaced the kitchen faucet with a bathroom faucet and the tenant would like a kitchen faucet returned to that sink; and
- The front door glass replaced after damage caused during a fire in July 2016.

The tenant submits that the unit is too cold to sleep and so for several months she and her children have been staying with family members and only return to the rental unit to

pick up clothes and food. She states dispute repeated attempts the landlord refused to have the heating looked at.

The tenant submits that the carpet requires replacement. She states that it is stained and smells despite her having it re-cleaned after the tenancy began. The tenant submitted that she has asked the landlord repeatedly for new carpeting and he refuses to provide it.

The tenant states that the stove in the kitchen is broken. She explained that heat seems to dissipate out of the oven and does not cook food. The tenant testified that the stove was missing some plastic but she could not describe what she meant.

The tenant submitted that the closet doors were all broken and that the bathroom sinks were rusty; old and broken. In support of her claim the tenant has submitted several photographs.

Analysis

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

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

Based on the submissions of the tenant I find that all but one of her requests for repairs is subject to Section 32(1). The only repair that does is not subject to Section 32 is the hearing system.

From the submissions, including a response from the landlord to specific requests made by the tenant, and the testimony of the tenant I find the tenant has identified and informed the landlord of a problem with the closet doors; front door; and carpet. From the photographic evidence I am satisfied that the closet doors and front door require repair and or replacement.

However, I find the photographic evidence does not confirm a need to have the carpets replaced. Despite her testimony that she had re-cleaned the carpet she has provided no evidence to confirm any such cleaning. I find that the while the carpets may be old they are not in the condition stated by the tenant. I dismiss this portion of the tenant's claim.

I am not satisfied that the tenant has ever requested repairs to the stove or bathroom sinks. As such, I find the landlord has not been made aware of any problems with the plumbing fixtures or the stove.

In regard to the tenant's request to have the landlord reinstall a kitchen sink faucet in the kitchen sink, I find the tenant has provided no evidence that the landlord had replaced the kitchen sink with an improper faucet. I dismiss this portion of the tenant's claim.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of 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.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- 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; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

I find, based on the tenant's submissions that the landlord is aware that the tenant has requested a repair. I am also satisfied the landlord has taken no action to assess a need for repairs.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

XXXX

Conclusion

Based on the above and pursuant to Section 32(1) of the *Act*, **I order the landlord to**, within two weeks of receipt of this decision:

- Repair or replace the closet doors in the rental unit;
- Repair or replace the exterior door damaged during a fire;
- Investigate the tenant's complaints regarding the stove and bathroom sinks to determine if any repairs or replacements are required;

Based on the above and pursuant to Section 33 of the *Act*, **I order the landlord to**, immediately hire a qualified heating technician to assess and repair any deficiencies in the heating system.

I caution the landlord that should he fail to comply with the above noted orders the tenant may apply for a rent reduction until the orders are complied with. In addition, the landlord may be subject to administrative financial penalties, imposed by the director, for failing to comply with an order of the director.

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: December 06, 2016

Residential Tenancy Branch