



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

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

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

At the outset of the hearing the tenant requested an adjournment. The tenant submitted that she had just obtained an advocate the day before this hearing. She stated that she started looking for an advocate a few weeks ago but after she had already submitted her Application for Dispute Resolution.

The landlord objected to an adjournment, in part, because they have been having ongoing disputes with this tenant. The landlord testified that the tenants have not paid rent for several months and she wants to get all of these issues resolved quickly.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

Upon consideration of the verbal submissions of both parties, I found that an adjournment would not contribute to the resolution of the issues put forward in the tenants' Application. I also noted that the Application is solely for the purpose to obtain an order to have the landlord complete emergency repairs.

The hearing was given priority scheduling specifically because the tenant has indicated she needs emergency repairs. If there is a need for an emergency repair, I find it would be unfair to both parties to delay this hearing. As such, I dismissed the tenant's request for an adjournment. The hearing proceeded.

Also at the start of the hearing the tenant clarified that she had served to packages to the landlord in relation to this proceeding. The initial package included the Notice of Hearing documents including a copy of her Application. The parties agreed that service of these documents was completed in December 2016.

The tenant testified that she served the landlord with the second package of evidence on January 5, 2017 in person. The landlord testified the tenant served the second package on January 9, 2017. I note the Residential Tenancy Branch received a second package of evidence from the tenant on January 9, 2017.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

Rule of Procedure 3.11 states that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

In the case before me, I find that even if I were to accept the tenant's testimony that she served the landlord with the second package of evidence on January 5, 2017 or 8 days before the hearing the tenant has failed to serve the landlord with the second package in accordance with Rule of Procedure 3.11. Therefore, I have not considered the second package submitted in this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order requiring the landlord to complete emergency repairs, pursuant to Section 33 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on October 1, 2015 on a month to month basis for a current monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$325.00 made.

The tenant identified in her submissions that she was seeking repairs to the living room window; repairs to holes in the wall resulting from electrical work; and the replacement of a ceiling fan and installation of a range hood in the kitchen.

The tenant submitted that the landlord had promised her a replacement window in her living room since the start of the tenancy but that she has not replaced it. She states that the window is not secure and that it cannot be locked. She also stated that if she moves it falls out.

The landlord submitted they have begun replacing all windows on the residential property but that the work had to stop in the fall because of the weather and they plan to start up again in the spring when it is warmer and dryer. The landlord testified that she was unaware that the window was that problematic and she would have it looked at right away.

The parties agreed that work had been done in regard to the installation of an exterior light at the entrance to the rental unit. They also agreed that the work remains incomplete; specifically the wholes have not yet been patched up. The tenant submits that wires are exposed; the landlord testified that any wiring is encapsulated in a tube and not exposed.

The landlord testified that it is on her handyman's list of repairs to make but it was given a low priority. The landlord confirmed the electrical work was completed a few months ago.

The tenant stated that the landlord had promised her a replacement fan in her living room before she moved and the installation of a range hood in the kitchen shortly after she moved in but the landlord has never provided either. She states that the light the fan in the living room does not work at all and the fan only works "when it wants to"

The landlord testified that she did not promise the tenant a new fan for the living room at any time. She stated that when the tenant moved in the landlord told her that if she were going to get new fans she might replace the tenants. The landlord testified this hearing was the first time she had ever heard the tenant wanted a range hood fan for the kitchen.

The tenant confirmed that all of her requests were verbal and no written requests were ever forwarded to the landlord for any of these requests.

Analysis

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.

In regard to the tenants' request for a replacement window, I find that the definition of emergency repairs applies to this request as it includes a defective lock on the window. I am satisfied that the landlord intends, in the very near future, to replace the tenants' window.

While I will not order directly that the landlord replace the entire window at this time, I do find the need to ensure the window will lock is a security issue that is urgent in nature. As such, I order that if the landlord is not prepared to replace the window until warmer, dryer weather she must ensure the tenants' window is secure but still allows the ability to open and close until such time as the window is replaced.

If the landlord fails to comply with this order or fails to replace the window in warmer, dryer weather I grant the tenants are at liberty to seek an order to have the landlord make these repairs and for compensation and/or a retroactive rent reduction to the date of this decision.

In regard to the tenants' request to have the landlord complete the repairs to the drywall in the rental unit resulting from previous electrical work, I find the tenants have failed to provide any evidence that there are exposed wires. Furthermore, I find drywall work is not listed as a repair that is considered an emergency under Section 33 of the Act. I dismiss this portion of the tenants' Application as an emergency repair to drywall.

In regard to the installation of a new fan in the kitchen when none exists in the kitchen I find that such a request could not be considered as repair or an emergency as defined under Section 33. I dismiss this portion of the tenants' Application as an emergency repair to install kitchen fan.

In relation to the tenants' request to change the ceiling fan in the living room, I find the tenants have potentially described a problem with their electrical system. If such a problem exists with the fixture the potential exists for damage being caused to the landlord's property, the tenants' safety, and their belongings.

As such, I find it is necessary for the landlord to have a qualified electrician inspect the living room ceiling fan and if electrician determines it does not work or is dangerous in any way the landlord must replace the ceiling fan similar to the existing fixture. If the landlord wishes to forgo the use of a qualified electrician to inspect the ceiling fan she may simply replace the existing fan with a newly purchased and comparable fan.

Conclusion

Based on the above, the landlord must:

- Immediately, ensure the living room window is secure and usable until the window is replaced when the weather warms up or replace the window; and
- Immediately, either replace the ceiling fan or hire a qualified electrician to inspect the existing one and replace it if recommended to do so by the electrician.

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 13, 2017

Residential Tenancy Branch