



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MNR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that each landlord named in this application was served with a copy of the application and the hearing package on March 17, 2017 by registered mail. The tenant provided the Canada Post tracking numbers into oral evidence to verify this method of service; these numbers are detailed on the front page of this decision. The Canada Post website shows that the documents were received and signed for on March 20, 2017 and March 22, 2017. Therefore, based on the undisputed evidence before me, I find the landlord was served pursuant to Section 89(1) (c) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Is the tenant entitled to a monetary order for the cost of emergency repairs to the rental unit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the tenant, the tenancy began on December 1, 1998 on a month-to-month basis. Rent in the amount of \$1,293.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$463.50 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

Repairs

The tenant contends that she has endured an intermittent roof leak from 2014 to April 2016. She is not entirely certain the roof leak was repaired but confirms her ceiling has not leaked since April 25, 2016. The tenant testified that as a result of the leak, her rental unit was damaged and despite requests to have it repaired, it remains damaged. The tenant seeks the following repairs:

Hallway closet ceiling and wall	Repair and paint
Hallway ceiling	Repair and paint
Kitchen ceiling	Repair and paint
Bedroom ceiling	Repair and paint

Monetary Claim

The tenant seeks a total monetary order of \$825.30.

The tenant testified that on February 8, 2017 at around 11pm at night her door key broke in the doorknob lock. Although she attempted to remove the key and even summoned the assistance of a neighbour she was unsuccessful in retrieving the key and unlocking the door.

The tenant testified that a 24 hour emergency number for “fire, flood or health threatening emergencies only” is posted to the building manger’s door. She testified that a further sign by the second floor elevator states, “if you find yourself locked out call a locksmith of your choice” and above this sign reads, “Please note the following is not considered an emergency and will be dealt with during normal business hours only.”

Since the tenant understood that she was not to use the emergency number for issues with locks, she called a 24 hour locksmith of her choice, to tend to the broken lock. The locksmith removed the lock and replaced it with a new lock. It is the tenant’s position

that the cost of the emergency repair in the amount of \$626.84 should be reimbursed to her.

On February 14, 2017, in response to the tenant's notification of the lock changes, the landlord instructed the tenant to provide a copy of the new key and to change the locks back to fit the master key. The tenant provided a copy of her new key to the landlord on March 2, 2017. On March 6, 2017 the tenant had the lock rekeyed to the master key and provided a copy to the landlord. The tenant seeks reimbursement of this \$198.45.

Analysis

Repairs

Pursuant to section 32 of the *Act*, a 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, makes it suitable for occupation by the tenant.

Based on the tenant's undisputed testimony that the roof has a history of leaking and in the absence of confirmation the leak has been repaired, I order the following;

1. I order the landlord to obtain further evaluation of the leak by a certified roofing professional no later than May 3, 2017. If the certified roofing professional determines that repairs are necessary, the landlord must have the repairs completed by a certified roofing professional no later than May 17, 2017. Should the certified roofing professional determine repairs are not necessary, written reasons must be provided by the technician to the landlord who in turn will provide the reasons to the tenant.
2. I order the landlord to repair and paint the hallway closet ceiling and wall, hallway ceiling, kitchen ceiling and bedroom ceiling no later than one week following the necessary repairs (or written determination that repairs are not required).

Monetary Claim

Section 33 of the *Act* describes "emergency repairs" as those 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 purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures

- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

In this case, there was only one point of entry to the rental unit and it was inaccessible due to the lock. I accept the tenant's evidence that her key broke in the lock and she could not gain access after-hours. There is no doubt the repair was in relation to a damaged or defective lock that gives access to the rental unit. On this basis, I find the initial lock replacement was an emergency repair within section 33(1) of the *Act*.

Section 33(2) of the *Act* requires the landlord to provide the telephone number for emergency repairs. Subsection 33(3) of the *Act* requires the tenant to contact the landlord or their agent through the emergency number provided at least twice to request the repair and if the landlord does not make the repair in a reasonable time the tenant may make the repairs. Subsection 33 (6) establishes that a landlord is not responsible for the cost of emergency repairs if the tenant fails to contact the landlord through the emergency number at least twice prior to making the repair.

Based on the tenant's undisputed testimony, I am satisfied the landlord provided a contact number for emergency repairs and the tenant failed to call this number. The lack of clarity on the signage does not negate the tenant's obligation under section 33(3) to contact the landlord or agent prior to making any repairs. As such, I find the tenant was not authorized to make the emergency repairs and dismiss this portion of her claim.

In relation to the tenant's monetary claim for the subsequent re-keying of the lock, I find this occurred as a result of the initial unauthorized emergency repair made by the tenant and therefore dismiss this portion of the tenant's claim.

As the tenant was not entirely successful in her claim, I do not award the cost of the filing fee.

Conclusion

I order the landlord to obtain further evaluation of the leak by a certified roofing professional no later than May 3, 2017. If the certified roofing professional determines that repairs are necessary, the landlord must have the repairs completed by a certified roofing professional no later than May 17, 2017. Should the certified roofing professional determine repairs are not necessary, written reasons must be provided by the technician to the landlord who in turn will provide the reasons to the tenant.

I order the landlord to repair and paint the hallway closet ceiling and wall, hallway ceiling, kitchen ceiling and bedroom ceiling no later than one week following the necessary repairs (or written determination that repairs are not required).

The tenant's claim for a monetary order for the cost of emergency repairs to the rental unit is dismissed without leave to reapply.

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: April 19, 2017

Residential Tenancy Branch