



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call. The tenant testified that the landlord was served with the hearing package which included notice of this hearing by registered mail on October 17, 2017. The tenant was given the opportunity to provide proof of such service after the hearing had concluded. I have now received a Canada Post cash register receipt bearing that date and a copy of a Registered Domestic Customer Receipt, and I am satisfied that the landlord had been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?

Background and Evidence

The tenant testified that this month-to-month tenancy began sometime in 2013, and the tenant still resides in the rental unit. Rent in the amount of \$550.00 per month is payable on the last day of each month for the following month, and there are no rental arrears. At the outset of the tenancy the tenant paid the previous landlord a security deposit in the

amount of \$300.00, which is still held in trust, and no pet damage deposit was paid. The rental unit is a suite in the lower level of a home, and the upper unit is also tenanted. There is no written tenancy agreement.

The tenant further testified that he notified the landlord that the toilet in the rental unit would not flush, which remained unusable for 5 months. The landlord finally made some repair on December 1, 2017 and now sometimes it works and sometimes it doesn't flush. The tenant requests an order that the landlord hire a professional to repair it properly.

The tenant also testified that a leak in the bedroom started about 2 years ago. The landlord repaired the leak and started to stucco but never finished it. The tenant seeks an order that the landlord have the repair completed.

The tenant sent a letter to the landlord about those repairs still required, and that the heat and cable were not working. A copy of the letter has been provided as evidence for this hearing and it is dated December 10, 2017. On December 21, 2017 the landlord called the tenant stating that perhaps the breaker blew, and the tenant now has heat and cable, but the other repairs have not been completed.

Analysis

Firstly, the *Residential Tenancy Act* does not permit a landlord to collect more than half a month's rent as a security deposit. In this case, I accept the undisputed testimony of the tenant that the previous landlord collected \$300.00, which is \$25.00 more than half of the \$550.00 monthly rent. The *Act* also states that a tenant may reduce rent by any over payment of a security deposit.

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

The tenant has not provided any evidence of that and has not made that application, and therefore I make no orders. However, the security deposit goes to the purchaser of a rental unit from the previous landlord, and if the tenant has paid more than half of the monthly rent, the tenant is permitted by Section 19 to deduct the overpayment from rent or may make an application for dispute resolution for a monetary order.

The *Residential Tenancy Act* defines emergency repairs as follows:

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.

A landlord is also required to maintain rental property.

I have reviewed the letter provided by the tenant as evidence for this hearing, and I accept the undisputed testimony of the tenant that the landlord has not taken steps to make the repairs despite requests by the tenant. I order the landlord to retain the services of a qualified plumber to repair the toilet completely. If the landlord fails to do so by February 15, 2018, the tenant will be at liberty to apply for monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act* and this order.

I further order the landlord to complete the stucco by February 15, 2018. If the landlord fails to do so, the tenant will be at liberty to apply for monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act* and this order.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

Conclusion

For the reasons set out above, I order the landlord to retain the services of a qualified plumber to repair the toilet completely. If the landlord fails to do so by February 15, 2018, the tenant will be at liberty to apply for monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act* and this order.

I further order the landlord to complete the stucco by February 15, 2018. If the landlord fails to do so, the tenant will be at liberty to apply for monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act* and this order.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee.

This order is final and binding and may be enforced.

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 02, 2018

Residential Tenancy Branch