



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package and the submitted documentary evidence. The landlord did not submit any documentary evidence. I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, the tenants clarified that they were not seeking an order to cancel the 2 Month Notice as this was chosen in error. As such, no further action is required.

Issue(s) to be Decided

Are the tenants entitled to an order for emergency repairs?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began in July 2015 on a month-to-month basis with a monthly rent of \$860.00 payable on the 1st day of each month.

The tenants seek an order for emergency repairs due to water flooding into one of the three bedroom(s) up from the flooring.

The tenants stated that this began approximately 2 months prior and is an ongoing issue(s) as he has lost the use of one of the three bedroom(s). The tenants have provided numerous photographs of the bedroom confirming water issues in the flooring. The tenants have made numerous requests for the landlord to repair the problem.

The landlord confirmed that there was a water issue in the foundation that was an ongoing issue with the previous owner (M.S./Sister). The landlord stated that they have been unable to determine the cause of the water seeping up into the floor of the bedroom. The landlord stated that they had hired a contractor to repair the issue. The landlord confirmed that no inspection was done by the contractor to determine the cause of the water ingress.

The tenants disputed the landlords claim that a foundation expert was hired and referred to the “contractor” that the landlord brought in as the landlord’s friend.

The landlord has claimed that the tenants have refused him access to conduct the necessary inspection and repairs of the water ingress. The tenants have disputed this claim. The landlord was unable to provide any evidence to support this claim.

Analysis

Section 33 of the Act describes “emergency repairs” as those 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 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

If a tenant has attempted unsuccessfully to have the landlord complete emergency repairs, subsection 33(5) of the Act requires a landlord to reimburse a tenant for emergency repairs if, the tenant claims reimbursement from the landlord and provinces

the landlord a written account of the emergency repairs accompanied by receipts for the amounts claimed. If the landlord does not reimburse the tenant, then the tenant may deduct the amount from rent or otherwise recover the amount (Act, s. 33(7)).

In this case, the landlord has confirmed that a water issues exists seeping into the flooring of one of the bedrooms in the rental premises. The landlord and his sister (the previous owner) confirmed that there have been water leaks in the past over numerous years. However, the landlord has claimed that he has engaged an expert contractor who is unable to determine the cause of the water ingress. The tenants have disputed this claim stating that the “contractor” was instead just a friend. The landlord has this “contractor” dig around the exterior of the foundation to put on water proofing with no success.

As such, I grant the tenants’ request ordering the landlord to hire a licensed foundation expert to determine the cause of the water ingress within 2 weeks of this decision being received and to begin repairs. If the landlord fails to comply with the order, the tenants may at their cost hire a licensed foundation expert and seek reimbursement from the landlord by providing an invoice

Conclusion

The tenants application for emergency repairs is granted.

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 17, 2018

Residential Tenancy Branch