



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, OLC, FFT

Introduction

This hearing dealt with the tenants' 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 33;
- an order to the landlord to make emergency repairs for health or safety reasons pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Tenant C.W. (the tenant) indicated that she would be the primary speaker for the tenants.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidence which was personally served to them on January 05, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's Application and evidence.

The tenant acknowledged receipt of the landlord's evidence which was personally served to them on January 29, 2018. In accordance with section 88 of the *Act*, I find the tenants were duly served with the landlord's evidence.

Issues(s) to be Decided

Are the tenants entitled to an order for the landlord to make repairs to the rental unit?

Are the tenants entitled to an order for the landlord to make emergency repairs for health or safety reasons?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided that this tenancy began on October 01, 2017, with a monthly rent of \$1,250.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$625.00.

The tenant provided in their evidence:

- a copy of an e-mail dated December 20, 2017, from the tenants to the landlord listing items in the rental unit that they would like the landlord to address such as black mould in the bathroom downstairs, a leak in the master bedroom and maintenance to be completed on the furnace including cleaning of the air ducts;
- a copy of an e-mail dated December 21, 2017, in which the landlord responds to the tenants and states that the tub was re-caulked prior to the tenants moving in, that the landlord has contacted the owner of the property about the leak in the master bedroom and that the landlord will remind the heating guy that the furnace still needs maintenance as he is performing the same type of maintenance on approximately 40 other units that the landlord manages; and
- pictures of the bathroom and a picture of the kitchen faucet.

The landlord provided in evidence:

- a copy of an e-mail dated December 06, 2017, in which the landlord addresses the leak in the back bedroom with the owner of the property and requests confirmation of action to be taken; and
- a copy of the Addendum to the tenancy agreement and a copy of the Condition Inspection Report in which it is stated that caulking needs to be done in the bathroom but no other repairs are listed for completion at start of tenancy;

The tenant testified that there are four main issues that need to be addressed in the rental unit. The tenant submitted that there is black mould in the bathroom which needs to be removed, a leak in the master bedroom, a leaky kitchen faucet and the furnace to be cleaned. The tenant stated that prior to moving into the rental unit the landlord indicated to them that they would have someone remove the mould in the bathroom and to remove and replace the toilet. The tenant further stated that water leaks into the master bedroom with the carpet becoming damp up to approximately a foot away from the wall when it rains or the snow melts. The tenant also stated that they were promised that the furnace ducts would be cleaned.

The landlord testified that caulking was done around the bathtub prior to the tenants moving into the rental unit. The landlord submitted that he never stated that he would replace the toilet and that replacing the toilet and re-doing the bathroom is out of the scope of the \$250.00 repair limit that the landlord is authorized to spend on each unit. The landlord stated that any repairs that exceed the \$250.00 repair limit need to be authorized from the owner of the residential premises.

The landlord testified that the previous occupant moved out with no issues in the rental unit noted to the landlord. The landlord stated that when the tenants called him in November 2017 about the water leak the landlord told them to call him the next time it happened so that he could write a report about it for the owner. The landlord submitted that if the leak is due to a crack in the foundation, no major repair could be completed until the ground thaws.

The landlord stated that he did not previously know about the water leaking from the kitchen faucet and agreed to have the plumber attend to this leak and to have the maintenance completed on the furnace in the next two weeks.

The landlord referred to the Condition Inspection Report stating that no repairs to be completed were noted on it other than the caulking of the bathtub, which was completed before the tenants moved in as promised.

Analysis

Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks

that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

I find the repairs requested by the tenants are not emergency repairs as defined by section 33(1) of the *Act*.

I find the leak in the master bedroom is not a major leak as the tenants have testified that the carpet only gets damp under certain conditions and there is no urgent repair required to preserve the residential property.

Regarding the mould in the bathroom, while not aesthetically pleasing, I find the tenants have not proven that the mould remediation is urgent and necessary for the safety of the tenants as no proof of the mould being a health risk to the tenants was provided.

Regarding the kitchen faucet leaking, I find the tenants have not provided evidence or testimony that the repair of the kitchen faucet is necessary for the preservation or use of the residential premises. The tenants have stated that the cupboard underneath the sink is wet, which may require further repairs in the future, but no evidence was provided that it is an urgent repair.

Regarding the maintenance on the furnace and the air ducts, I find that the tenant has not provided any testimony of any issues concerning the furnace not being in working condition and that there is an issue with heat in the rental unit. The tenants only state that maintenance of the furnace and air ducts was promised and they would like to have it completed. I find that the maintenance of the furnace and cleaning of the air ducts are not urgent as completion of this work is not necessary for the safety of the tenants or the preservation of the residential premises.

I find that the tenants have not provided any evidence for repairs that meet the definition of emergency repairs under section 33 of the *Act*. For this reason, I dismiss the tenants' Application for emergency repairs, without leave to reapply.

Regarding repairs to the rental unit that are not emergency repairs, I find that the leak in the kitchen faucet was not mentioned to the landlord in the e-mail dated December 20, 2017, and I accept the landlord's testimony that they were not aware of this issue until provided with the Application from the tenants. During the hearing, I find the landlord responded reasonably to the tenant's request to have the kitchen faucet repaired with a promise to address the issue in the next two weeks from the date of the hearing.

Regarding cleaning of the air ducts for the furnace, the mould in the bathroom, replacement of the toilet and the bathroom being re-done, I find there is no evidence provided that the landlord committed to the tenants that these repairs would be completed. I find that the Condition Inspection Report only mentions caulking of the bathtub to be completed, which both parties agreed was completed. I further find that completion of these repairs is not necessary for the use of the rental unit as the tenant has not provided evidence that any of these items are not in working order. I further find that the tenants accepted the condition of these items at the beginning of the tenancy as noted on the Condition Inspection Report.

Regarding the maintenance of the furnace, I find there is no evidence of a written timeline provided to the tenants on when this would occur. I accept the landlord's testimony that the heating guy has been doing maintenance work on other units managed by the landlord and has just not reached the tenant's unit yet to complete the maintenance.

I further find that the current operation of the furnace is not dependent on its immediate maintenance and that no repair is actually necessary, however; the landlord did acknowledge that he previously indicated that maintenance of the furnace would be completed and in the hearing committed to try to have the appropriate contractor attend to the unit for the maintenance of the furnace in the two weeks from the date of the hearing.

Regarding the leaking of water in the master bedroom, I find that the landlord did provide evidence that he addressed this issue with the owner. I accept the landlord's testimony that the current weather makes it difficult to investigate and complete the repair until the ground thaws, however; I do find that this is a repair that should be completed so that water is not leaking into the master bedroom once a repair of some type is completed.

I **order** the landlord to investigate and complete the repair to prevent water leaking into the master bedroom by the end of June 2018. If this repair is not completed by the end of June 2018, the tenants are at liberty to apply to the Residential Tenancy Branch for compensation.

As the tenants have been partially successful in their Application, I allow them to recover half of their filing fee.

Conclusion

I **order** the landlord to investigate and complete the repair to prevent water leaking into the master bedroom by the end of June 2018.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$50.00, to recover half of the filing fee for this application.

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: February 20, 2018

Residential Tenancy Branch