



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DONNYBROOK ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, OLC, FF

Preliminary matter

At the start of the conference call it was determined this tenancy is a residential tenancy not a commercial tenancy and that the Residential Tenancy Act has jurisdiction. The tenancy agreement states that use and occupancy of the rental unit is only for residential purposes and the tenancy agreement states the guidelines for residential subleases. Further the Tenant said the tenancy was a residential rental agreement first between himself and the Landlord/Owner and secondly between the Tenant and the subtenants.

Introduction

This matter dealt with an application by the Tenant for compensation from the Landlord for emergency and general repairs to the unit, site or property, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee or this application.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on December 22, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the absences of the Landlord.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation for emergency and general repairs that are needed to be completed or completed?
2. Has the landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on March 1, 2016 as a fixed term tenancy with an expiry date of February 1, 2017 and then was renewed for another 1 year fixed term expiring on February 28, 2018. The tenancy involves two units #180 and #190 in a duplex type building. Rent is \$2,100.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 at the start of the tenancy.

The Tenant said the Landlord and the Landlord's property managers did not make repairs to items in the rental unit when the Tenant notified the Landlord or his agent that repairs were needed. The Tenant said as a result he paid for and made the repairs to the unit himself. The Tenant said he has made this application to get approval for the deductions he has made to the February, 2018 rent for the repairs. The deductions to the rent are as follows:

- 1). The Tenant said on November 6, 2017 the Tenant emailed the Landlord that the faucets were leaking in the rental units and they needed to be replaced as the water was causing damage to the counter tops. The Tenant said the Landlord acknowledged the email on November 7, 2017 but the Landlord did not repair the faucets. The Tenant said he purchased new faucets and had them installed at a cost to the Tenant of \$345.56.
- 2). The Tenant said on December 3, 2017 the power was off in the rental unit because of a broken breaker. The Tenant said he notified the Landlord and the Landlord's property manager on December 3, 2017 and the Landlord nor the property manager took action to repair the breaker. On December 5, 2017 the Tenant paid to have the breaker repaired at a cost of \$309.42. The Tenant said the Landlord did response to his email of December 3, 2017 but the Landlord did not do anything to repair the electrical issue.
- 3). The Tenant continued to say there was an issue with the toilet on January 24, 2018. The Landlord was notified of the issue on January 24, 2018 and the Landlord said to use the former property manager to make the repairs. The Tenant said he paid for the repairs to be made in the amount of \$59.19.
- 4). The Tenant said on January 10, 2018 the refrigerator stopped working and he notified the Landlord on January 10, 2017. The Landlord did not respond so the Tenant paid for the repairs to the refrigerator in the amount of \$214.90.
- 5). The Tenant said he is not sure of his last claim because it is for the Landlord to purchase the washers and dryers that the Tenant put into the units. The Tenant said it was agreed in the tenancy agreement that the Tenant would take over the laundry machines and be responsible for the ownership and maintenance of the machines. The Tenant said he would like to sell the laundry machines to the Landlord at the end of the

tenancy which is February 28, 2018. The Tenant said he wants \$300.00 in total for the 2 washers and 2 dryers.

The Tenant continued to say that he deducted the following from the February, 2018 rent cheque and he is requesting these amounts to be granted as an order from the Residential Tenancy Branch.

Repair faucets	\$ 345.56	
Repair electrical breaker	\$ 309.42	
Repair toilet	\$ 59.19	
Repair refrigerator	\$ 214.90	
Sell laundry machines	<u>\$ 300.00</u>	
Total		<u>\$1,229.07</u>

The Tenant provided receipts for his costs of repairs, copies of emails sent to the Landlord and photographs of the repairs that needed to be completed.

The Tenant continued to say that he sent the February, 2018 rent payment of \$2,100.00 less the repair and machine sale costs of \$1,229.07 for a total of \$870.93. The Tenant requested that the deductions that he has made for repairs and the sale of the laundry machines be awarded to him.

Further the Tenant's application includes a request for the recovery of the filing fee of \$100.00 from the Landlord.

Analysis

Section 32 of the Act says a Landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant.

Therefore a Landlord is obligated to repair items include in the tenancy agreement.

Further Section 33 of the Act says (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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In situations where emergency or general repairs are required to be done by a landlord the Tenant most attempted to notify the landlord at least twice or get acknowledgement of the repairs requested by the Landlord. In this case I accept the Tenant's evidence and testimony that the Landlord or the Landlord's property managers were aware of the repair issues and the Landlord or the property manager did not take action. It should be noted the Landlord did not attend the hearing even though the Landlord was served with the hearing package as required by section 89 of the Act. The Landlord did not submit any evidence for his defence. Consequently I find the Tenant did comply with the Act in notifying the Landlord of the repairs required.

With regard to the Tenant's claims for the faucet repairs of \$345.56 and the electrical issues in the amount of \$309.42, I find the Tenant has established grounds that these were emergency repairs and the Landlord was not responsive. The Tenant said the faucet was leaking to the point the counters were being damaged and the breaker was off so there was no heat in the rental unit. These are both emergency situations. As well the Tenant has submitted paid receipts for the repairs, therefore I order the Tenant to reduce the February rent by \$345.56 and \$309.42 for emergency repairs.

With regard to the toilet repair of \$59.19 and the refrigerator repair in the amount of \$214.90, I find these repairs are general repairs not emergency repairs. Further I accept the Tenant's testimony and evidence that based on the Landlord's response to the emergency repairs the Tenant had grounds to make these repairs on his own. I find the Tenant has established grounds for reimbursement of the general repairs of the toilet and refrigerator in the amounts of \$59.19 and \$214.90. I order the Tenant to reduce the February, 2018 rent by the amounts of \$59.19 and \$214.90.

Further I have reviewed the tenancy agreement and it states the laundry machines are owned and maintained by the Tenant. Any sale agreement between the Tenant and the Landlord with regard to these assets are outside of the Residential Tenancy Act's jurisdiction. The Tenant and the Landlord are at leave to make a purchased agreement on these items if desired. The Tenants request to have the February, 2018 rent reduced by \$300.00 for the sale of the laundry machines is dismissed without leave to reapply.

In summary I order the Tenant to reduce the February, 2018 by $\$345.56 + \$309.42 = \$654.98$ for emergency repairs and $\$59.19 + \$214.90 = \$274.09$ for general repairs done by the Tenant. The February rent is order to be $\$2,100.00 - (\$654.98 + \$274.09 = \$929.07) = \$1,170.93$.

Further as the Tenant has been partial successful in this application I order the Tenant to recover the filing fee of \$100.00 from the Landlord.

The Tenant will reduce the February, 2018 rent from \$2,100.00 to the following:

	February 2018 rent		\$2,100.00
Less	Emergency repairs	\$ 654.98	
	General repairs	<u>\$ 274.09</u>	
	Sub Total		<u>\$ 929.07</u>
Less	Recover filing fee		<u>\$ 100.00</u>
	Total February 2018 rent owing		<u>\$1,070.93</u>

Conclusion

I Order a onetime rent reduction of the Tenant's February, 2018 rent by \$929.07 for repairs and \$100 for the filing fee. The February, 2018 rent is reduced to \$1,070.93. .

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 13, 2018

Residential Tenancy Branch