



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, PSF, MNDCT, OLC, FFT

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 emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the landlord's agent (agent), the landlord's assistant (assistant) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to cross examine one another, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that the Application for Dispute Resolution (the Application) and an evidentiary package were served to the landlord by registered mail on January 06, 2018. The landlord confirmed receipt of the Application and the evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with these documents.

The tenant acknowledged receipt of the landlord's evidentiary package which was posted to the door of the rental unit on February 13, 2018. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The tenant submitted a second evidence package to the Residential Tenancy Branch (RTB) on February 16, 2018. The landlord stated that he did not receive the second additional evidence package from the tenant. In the second evidence package was a 53 page and a three page evidence submission that the landlord had previously served to the tenant, but the landlord had not submitted this evidence to the RTB.

Rule 3.14 of the RTB Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

As the 53 page and three page evidence submissions were served to the tenant from the landlord, I find the landlord is not prejudiced in accepting this evidence for consideration.

I find that the tenant did not serve the landlord with the remainder of the second evidence package in accordance with the RTB Rules of Procedure and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenant's second evidence package. For this reason the tenant's second evidence package, other than the 53 page and three page landlord submissions, are not accepted for consideration.

At the outset of the hearing the landlord submitted that the *Act* does not apply to this tenancy as it is commercial in nature. The landlord referred to the tenancy agreement provided in their evidence to support his submission.

I find that an arbitrator, in a previous decision from the RTB referenced above on the first page, has reviewed the tenancy agreement and made a finding that the *Act* applies to this tenancy. I further find that the landlord has not provided any new evidence or testimony which would make me re-consider jurisdiction and I find that the *Act* applies to this tenancy.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

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

Background and Evidence

The landlord and the tenant agreed that this tenancy began on September 01, 2013, with a monthly rent of \$3,000.00, due on the first day of each month. The landlord and the tenant could not agree whether a security deposit was paid.

The tenant provided in evidence:

- a copy of a Monetary Order Worksheet which shows the tenant's total monetary claim of \$9,628.10 which consists of \$7,297.50 for ceiling removal and hazardous clean up, \$1,413.46 for drywall and painting as well as \$917.14 for a fridge replacement;
- a copy of an invoice dated September 14, 2017, for asbestos abatement and black mold removal in the amount of \$7,297.50;
- a copy of a "Cost to install Drywall Ceiling, Mud , Tape and Sand" for \$779.25;
- a copy of a "Cost to Paint bare wall Bedroom and ceiling with Primer and Paint" for \$634.21;
- a copy of a receipt for a fridge delivery and the removal of the old fridge totalling in the amount of \$923.14;
- a copy of a summary of the tenant's claim against the landlord with a timeline of events that have occurred since the tenancy began, a description of the repairs that need to be completed at the rental unit, a description of the repairs that have been completed at the rental unit and dates the tenant notified the landlord of the needed repairs via registered mail;
- a copy of a letter addressed to the landlord from the tenant, dated August 01, 2017, listing the emergency repairs that need to be completed including a leaking back roof, a falling moldy ceiling in main floor bedroom due to leaking roof and the fridge leaking water inside causing food to spoil. The letter requests the landlord to contact the tenant and complete the repairs by August 18, 2017;

- a copy of a letter addressed to the landlord from the tenant, dated August 30, 2017, listing the emergency repairs that have been completed including the repair of a falling moldy ceiling in main floor bedroom, removal of hazardous materials, repairing the walls and painting. The letter also states that the fridge has been replaced and requests the landlord to reimburse the tenant for these expenses. The letter also lists other repairs to be completed including leaking back roof, mold in bathroom, mold in downstairs bedroom and broken window panes; and
- pictures of the damaged ceiling, pictures of the ceiling being repaired and pictures of the materials removed from the ceiling.

The landlord provided in evidence:

- a copy of the tenant's summary with the landlord's written responses to the tenant's statements;
- a copy of a 53 page evidence submission which includes multiple notice cards from Canada Post for items to be picked up by the landlord, all with different variations of the landlord's name; and
- a written response from the landlord regarding the tenant's claims in which the landlord states that the roof of the rental unit was replaced five to seven years ago. The landlord further states that on a previous attempt to fix the leak by the original installers of the roof they were interfered with by the occupants of the rental unit who told the contractors to not come on the property and that they were wasting their time. In this statement the landlord also indicates that he was never notified of the repairs needed at the rental unit and did not authorize any repairs to be completed at the rental unit.

The tenant testified that repairs are needed at the rental unit, which has resulted in disagreements between the landlord and the tenant as to who should pay for these repairs. The tenant stated that in a previous RTB decision, referenced above on the first page, the tenant was awarded compensation for a water leak that caused flooding to occur in the basement and was also awarded an order for the landlord to repair the leaking roof in early 2017.

The tenant submitted that he sent a letter to the landlord on August 01, 2017, detailing the urgent repairs that were required at the rental unit including the replacement of the fridge, repair of the ceiling in the main floor bedroom due to moldy pieces falling down and the leaky back roof. The tenant testified that pieces of the ceiling were falling down in the main bedroom due to water ingress caused from the leak in the roof.

The tenant stated that they are seeking to be reimbursed for their costs incurred for the urgent repair of the ceiling in the main floor bedroom, which included asbestos and mould removal, as well as the costs associated with new drywall and painting of the repaired areas. The tenant submitted that they are also seeking compensation for the cost incurred of a new fridge due to the previous fridge not being able to hold a consistent temperature and deemed unrepairable. The tenant referred to the Canada Post notice cards in the landlord's evidence as proof that the landlord was notified of the requested repairs.

The landlord questioned the tenant on the number of people living in the rental unit and whether there is someone living in the attic which would have contributed to the damaged ceiling.

The tenant responded to the landlord and stated that there are five bedrooms in the rental unit, including one in the attic, and that four other people live in the rental unit with him. The tenant stated that the person who lives in the attic is not on the side where the ceiling damage is.

The landlord stated that five people using one fridge has caused excessive wear and tear on the old fridge and that the damage to the fridge is due to the tenant having an unreasonable number of people living in the rental unit and using the fridge. The landlord contended that the attic was not built or intended for someone to occupy it.

Regarding the leaky roof, the landlord stated that a new roof with a life expectancy of 20 – 25 years was put on the rental unit five to seven years ago. The landlord submitted that when he was notified of this leak a few years ago he attended the rental unit with the roofers who had originally installed the roof and that they were harassed and denied access by the occupants at the rental unit.

The landlord testified that the repairs completed at the rental unit were done without his consent or knowledge and that he has not been notified by the tenant of any repairs to be completed at the rental unit since the leaky roof. The landlord questioned the validity of the invoice provided by the tenant for the ceiling repair due to the lack of any type of contact information for the contractor on it and the different writing fonts contained within the invoice. The landlord further testified that the rental unit does not have any asbestos in it and questioned the high costs on the invoice for its removal.

The assistant submitted that he did an extensive search on the internet for the contractor named on the invoice but could not find any record of that person. The

assistant further submitted that any contractor removing asbestos and vermiculate has to be qualified and that they need a permit to dispose of it. The assistant stated that a contractor qualified to do this work should be registered to handle and dispose of asbestos.

The assistant also questioned the invoice for the drywall and painting work, stating that the only result from a search on the internet for that contractor's name resulted in a variation of a cartoon character's name. The assistant stated that neither invoice provided by the tenant has any type of contact information on it which is required, specifically when a claim has to be made. The assistant also maintained that real invoices should have some type of indication on it that they need to be paid or that they have been paid and that the invoices, other than the one for the fridge, look like they were done on the tenant's computer.

The assistant stated that the landlord was never notified of the repairs to be completed at the rental unit and referred to the Canada Post notice cards provided in evidence which show different variations of the landlord's name on them. The landlord's assistant contended that the landlord was never able to receive the registered mailings from the tenant as the tenant purposefully misspelled the landlord's name to prevent the landlord from being able to pick up the registered mailings from Canada Post.

The agent submitted that the tenant is trying to defraud the landlord and that any repairs to the rental unit should be going through the landlord. The agent stated that if the ceiling was falling due to a leak in the roof, it is the tenant's fault due to preventing the landlord from repairing the roof when he previously attended with contractors.

The tenant responded to the landlord's testimony and stated that there are two fridges in the rental unit due to five people needing the use of a fridge, so there would be no issues with the fridge being overused. The tenant stated that the invoices are real and that he tried to hire the cheapest people he could find, on a specific website where people offer their services, to complete the work which may explain the quality of the invoices.

Analysis

Compensation for Damage or Loss under the Act, Regulation or Tenancy Agreement

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulations (the Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the tenant bears the burden to prove that they incurred a loss and that this loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulations* or tenancy agreement.

Section 33 of the *Act* allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time. 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 **and 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 have reviewed the documentary evidence, including the affirmed testimony, and I find that none of the repairs completed by the tenant match with the definition of what constitutes an emergency repair in accordance with section 33 of the *Act*. Although the tenant may have incurred a loss, I find that it was not due to the actions or neglect of the landlord as the repairs were not urgent as defined by the *Act* and the landlord had the right to complete the repairs himself.

If the tenant notified the landlord of the repairs in writing and the landlord did not take action to complete those repairs, the correct course of action for the tenant would have been to file an application with the RTB to obtain an order for the landlord to complete the repairs. I am satisfied the tenant would be aware of this as per the previous decision noted on the cover page of this decision which ordered that, should the landlord fail to comply with that order to repair the roof the tenant could make a new Application.

For the above reasons, the tenant's claim for a monetary order for damage or loss under the *Act*, *Regulations* or tenancy agreement is dismissed, without leave to reapply.

Repairs and emergency repairs to be completed by landlord; landlord to provide services or facilities required by law; and landlord to comply with the Act.

The tenant bears the burden to prove that they have repairs to be completed, including the leaky back roof and the leaking foundation, which the landlord has not completed in reasonable time frame after being notified in writing from the tenant.

Based on the tenant's testimony, I find the tenant already has an order regarding the repair of the leaky roof in a previous RTB decision.

I have reviewed all documentary evidence, including the affirmed testimony, and I find that the tenant has not provided any evidence of the other repairs to be completed and that the services they are requesting are for the repairs and emergency repairs to be completed in a timely manner. I find that the only evidence of the repairs to be completed is the correspondence that was addressed to the landlord requesting repairs to be made. I find that the landlord has disputed the fact that he received any of the tenant's correspondence regarding these requested repairs.

Based on the evidence and a balance of probabilities, I find that there is a question as to whether the landlord was actually served with any formal request in writing for repairs to be made. I find that the variations of the landlord's last name on the Canada Post notice cards, which reflect who the registered mail was addressed to, prevented the landlord from picking up these registered mailings from the Canada Post outlets and that the landlord did not have knowledge of the requested repairs or services the tenant requested to be provided.

For the above reasons, I dismiss the tenant's request for repairs, emergency repairs, for the landlord to comply with the *Act* and for services to be provided, with leave to reapply.

I note that the landlord has agreed to attend to the rental unit to investigate and repair the leaky roof if required. The previous decision and order noted above indicates that if the landlord does not comply with that order then the tenant may seek a rent reduction until such time as the repairs are completed.

As the tenant has not been successful in their Application, I dismiss their request to recover the filing fee from the landlord without leave to reapply.

Conclusion

The tenant's Application for repairs, emergency repairs, for the landlord to comply with the Act and for the landlord to provide services/facilities required by law is dismissed, with leave to reapply.

The remainder of the tenant's Application 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: March 20, 2018

Residential Tenancy Branch