



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking an Order for the Landlord to comply with the Act, regulation, or tenancy agreement and an order for the Landlord to make repairs to the rental unit.

The hearing was convened by telephone conference call and was attended by the Tenant and her assistant (the “Assistant”), both of whom provided affirmed testimony. The Landlord did not attend. The Tenant and her Assistant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Application, the Notice of Hearing, and the evidence package were sent to the Landlord at the address for doing business listed on the tenancy agreement, by registered mail, on May 15, 2018. In support of this testimony, the Tenant provided the registered mail tracking number. As a result, I find that the Landlord was deemed served on May 20, 2018, five days after the documents were sent by registered mail. Further to this, I note that the Landlord submitted documentary evidence in advance of the hearing. As a result, I am satisfied that she was aware of the Application and the hearing.

I have reviewed all evidence and testimony before me that was accepted in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in her favor will be mailed to her at the mailing address provided in the hearing.

Preliminary Matters

Although the Landlord submitted documentary evidence to the Residential Tenancy Branch (the “Branch”) in relation to this hearing on June 14, 2018, neither the Landlord nor an agent acting on their behalf attended the hearing.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in their absence. Rule 7.4 goes on to say that evidence must be presented by the party who submitted it, or by the party’s agent, and that if a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As neither the Landlord nor an agent acting on their behalf attended the hearing to present the documentary evidence or make submissions based upon it, I have not considered the documentary evidence submitted by the Landlord in rendering my decision.

Issue(s) to be Decided

Is the Tenant entitled to an Order for the Landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to an Order for the Landlord to make repairs to the rental unit?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on August 1, 2016, and that rent in the amount of \$500.00 is due each month.

The Tenant testified that the Landlord is failing to give proper written notice as required in section 29 of the *Act* when entering the rental unit or having tradespersons enter. As a result, the Tenant requested that unless otherwise agreed upon, the Landlord comply with section 29 of the *Act* and provide her with written notice to enter the rental unit at least 24 hours in advance and not more than 30 days before the entry. She also requested that the notice state the purpose for entering, which must be reasonable, and the date and the time of the entry, which must be between 8 a.m. and 9 p.m.

The Tenant also requested that the Landlord make repairs to her fridge, which is continually thawing and refreezing items in the freezer, causing food loss and water spillage, as well as a leaking water shut off valve behind the toilet. The Tenant stated that she has requested these repairs in writing from the Landlord without success. In support of her testimony the Tenant submitted photographs of the leaking water shut off valve and the water leaking from the freezer.

Analysis

Section 29 of the *Act* states the following with regards to a landlord’s right to enter a rental unit:

Landlord's right to enter rental unit restricted

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I accept the Tenant's undisputed testimony that the Landlord has failed to give proper notice for entry to the rental unit for herself or tradespeople. As a result, I Order that the Landlord comply with section 29 of the *Act* and unless otherwise agreed upon or provided for under section 29 of the *Act*, give the Tenant at least 24 hours and not more than 30 days written notice of any entry which must include the purpose for entering, which must be reasonable, as well as the date and the time of the entry, which must be between 8 a.m. and 9 p.m.

I also accept the Tenant's undisputed testimony that the fridge and the toilet water shut off valve require assessment and repair.

Section 32 of the *Act* states the following with regards to landlord and tenant obligations to repair and maintain a rental unit:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on the above, I find that the Landlord is obligated to repair and maintain the fridge, the plumbing, and the plumbing fixtures in the rental unit and I therefore make the following orders:

- **I Order** the Landlord, at their own cost, to have a licensed and qualified professional (or professionals, as needed), attend the rental unit as soon as possible, and in any event, not later than seven (7) days after the date of this decision, for the purpose of assessing the repairs required to both the fridge and the water shut-off valve for the toilet.
- **I Order** that the Landlord provide at least 24 hours written notice of any entry to the rental unit for the above noted purpose, and for the purpose of completing any necessary work or repairs, unless otherwise agreed to by the parties.
- **I Order** that the Landlord provide a report from the licensed professional to the Tenant within 24 hours of their attendance stating what repairs are required and what work, if any, was completed.
- **I Order** that any repairs or appliance replacements necessary in order to ensure that the Tenant has a properly functioning fridge and freezer and a leak-free water shut off valve for the toilet be completed as soon as possible, and in any event, with seven (7) days of the date the licensed professional first attends the rental unit.
- **I Order** the Tenant to provide the Landlord and any necessary licensed professional with access to the rental unit in accordance with the above noted orders.

The parties should be aware that should appliance replacement be necessary, the Landlord only needs to replace the appliance with a working model of comparable size and quality. Any such appliance is not required to be new.

Should the Landlord fail to comply with these Orders, the Tenant will be at liberty to file a claim with the Branch seeking an Order restricting or setting conditions on the Landlord's right to enter the rental unit and/or authorization to change the locks, as well as compensation for any loss suffered by the Landlord's failure to comply.

Conclusion

Pursuant to sections 29 and 32 of the *Act*, I Order the Landlord to comply with the Orders described above.

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: July 17, 2018

Residential Tenancy Branch