



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, OLC, ERP, RR

Introduction

This is an urgent Application for Dispute Resolution (the “Application”) brought by the Tenants requesting emergency repairs, compensation for emergency repairs, rent reduction, a monetary order for damages and compensation and an Order requiring the Landlords to comply with the Act or Regulations.

The Landlords and Tenant appeared for the scheduled hearing. A lawyer and two relatives were present with the Landlord, acting as agents and translator (referred to as “Landlords” hereafter). The Tenant had an advocate present with her for the hearing (referred to as “Tenant” hereafter). Neither party raised any issues of service related to the Notice of Hearing and evidence submitted by both parties. .

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

The Landlords stated that the Tenant’s most recent evidence was submitted to them via USB on July 5, 2018. The Landlords do not have a computer to view the evidence. Under Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure, a party that is unable to access digital evidence may contact the other party as soon as possible and in any event within 7 days. In this case, I find that the Landlords had their lawyer assisting on this matter and the parties confirmed that they have viewed the evidence in advance of the hearing; there was no evidence to suggest that the Landlords or their lawyer contacted the Tenant for an alternate form of evidence and their request denied. For reasons stated below, most of the evidence filed related to secondary issues which were not considered in this decision, in any event.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order of \$3,000.00 for the cost of emergency repairs, pursuant to section 67 of the Residential Tenancy Act (“Act”)?
2. Is the Tenant entitled to an Order requiring the Landlords to make emergency repairs, pursuant to section 33 of the Act?
3. Is the Tenant entitled to a monetary order for damages or compensation in the sum of \$16,261.00 under section 67 of the Act?

4. Is the Tenant entitled to an Order requiring the Landlord to comply with the Act, Regulations and/or tenancy agreement, pursuant to section 62 of the Act?
5. Is the Tenant entitled to a rent reduction of \$500.00, pursuant to section 65 of the Act?

Preliminary Issue:

The parties each submitted evidence for issues that are in dispute more than a month after the Application was filed. I find that this Application was intended to be “urgent” under section 33 and emergency repairs are the primary issue for my consideration.

The Rules of Procedure published by the Residential Tenancy Branch state at Rule 2:

Urgent applications

For urgent applications as outlined below, the applicant must submit all evidence with the Application for Dispute Resolution or within three days of submitting an Online Application for Dispute Resolution. If the applicant submits additional evidence for an urgent application after submitting the Application for Dispute Resolution, the arbitrator will consider whether or not to accept the evidence and may adjourn the hearing under Rule 7.8 [Adjournment after the dispute resolution hearing begins].

Urgent applications may include applications under Residential Tenancy Act section 33, 54, 56.1 or 65.

I find that the late submission of evidence primarily relates to issues not relevant to section 33 emergency repairs, and do not warrant an “urgent application”. Accordingly, under Rule 2.3, I am severing the non-urgent issues and grant the Tenant leave to reapply. This will extend the time that the parties have to review the considerable volume of evidence filed for the secondary issues in dispute.

Therefore the only issue before me today is the urgent issue of emergency repairs and whether there ought to be any monetary order for emergency repairs completed by the Tenant (issues #1 and #2, above).

Background and Evidence

This tenancy began February 1, 2014 and the current rent is \$809.00 per month. The tenancy was a month-to-month tenancy to rent a suite on the second floor of the building. The parties did not submit a written copy of the tenancy agreement or provide particulars as to the security deposit paid.

The Tenant claims that she has been experiencing water back-ups in her shower area which results in water on the floor that drains into the pharmacy located below. She suspects that there is also a plumbing issue with the pipes leading from the shared laundry room directly above her unit. Her kitchen sink is also backing up water. She submitted seven videos into evidence of the water drainage issues and states other residents have also complained about water issues.

RC is an occupant who lives on the third floor and he submitted a letter indicating that there was flooding in his kitchen as recently as February of 2018 and that water would not drain; similar issues happened in his bathroom. MS lives on the third floor as well, and in a written submission also reported moisture

problems in the kitchen and bathroom, including water that would not drain. The video evidence shows water backing up and/or not draining from the kitchen sink.

The Landlords state that they hired a plumber some time ago, but did not submit evidence of this. They claim the water issues only came to their attention in December 2017, and they believe it was stemming from an issue involving a washer being put into the Tenant's suite.

The Tenant states the washer was removed and was never used, having missing parts, and this was addressed in an earlier decision. The Landlord does not consider there to be any plumbing issue at this point in time and state that the water backing up into the kitchen sink is something they were not aware of. They agree they have not answered phone calls from the Tenant, claiming police advised them to avoid contact following the Tenant's filing of a harassment complaint to police.

The Landlords state that if the plumbing for the laundry room is still causing any plumbing issues in the Tenant's suite, they would need to relocate the laundry room or install all new plumbing throughout the building. When questioned as to whether any clogs or cracked pipes had been investigated, the Landlords did not reply.

The Tenant states she is a single mother and it is not her responsibility to ensure the plumbing is in working order; she states that she does not have invoices for work paid by her to address this issue. She commented that the Landlord has two other units vacant in the building, one adjacent to her suite and one upstairs on the third level.

The Landlords proposed a settlement which was unacceptable to the Tenant. They state they cannot make the repairs if the Tenant's plumbing problems are related to the laundry room. They are not prepared to relocate the Tenant to another suite in the building as those units are not available for occupancy at this time. They suggested they may have family move into the rental unit at some future point which would require the Tenant to move out, to which the Tenant strongly objected.

Analysis

The legislation has a very limited scope of what is deemed to be "emergency repairs":

- 33 (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. (bolding added)*

I find the only issue raised by the Tenant that qualifies as an emergency repair under section 33 is that of the plumbing and water backups. Plumbing is the Landlords' responsibility to repair unless damage is caused by actions or neglect of the tenant. I further find that the Tenant has made attempts to contact the Landlords by telephone as required under the Act, but no repair has been made. I am satisfied that the water back-up issues are not related to the Tenant having a washer as that was removed months prior and the previous decision found that there was no evidence to prove she had ever used that appliance.

Based on the evidence before me, I am not satisfied the Landlords have taken steps to properly investigate the plumbing problems. However, I have reviewed the video evidence and find that the poor drainage in the kitchen sink and moisture issues do not jeopardize the health or safety of the occupants. They are not "urgent" in the sense that it prevents the Tenant from occupying the suite. Accordingly, I cannot make an order for *emergency* repairs as the evidence does not satisfy me that the plumbing problems meet the criteria in section 33 of the Act. However, the Tenant has raised a concern about a plumbing issue of a relatively minor nature, and I order the Landlord to investigate and attend to any repairs required.

Finally, to address any emergencies in the future the Landlords is required to provide the Tenant with a telephone number that will be answered., pursuant to Section 33(3)(b). The Landlords are reminded that if they plan to terminate this tenancy for their own use, there are strict requirements to be met under section 49 of the Act.

Conclusion

The Landlords are required to investigate and repair the plumbing issues as reported by the Tenant, no later than 30 days from the date of this decision.

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 26, 2018

Residential Tenancy Branch