



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIVERWALK VILLAS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP RP OLC

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 repairs and emergency repairs to the rental unit pursuant to section 33; and
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent MZ (the "landlord").

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The landlord testified that they had not served any evidence of their own. Based on the undisputed testimony I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to make repairs or emergency repairs?
Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The parties agreed on the following facts. The tenant has been residing in the rental unit since 2011. The landlord took over management of the rental building in 2015. The current monthly rent is \$887.00.

The tenant submits that the rental unit is old and in a state of disrepair. The tenant testified that among the outstanding issues are; a balcony door which will not open easily, the suite needing to be repainted, carpets needing to be replaced, kitchen floors needing to be replaced, kitchen drawers and counters falling apart, mold on bathroom walls, paint chipping, and seals around bathroom fixtures needing maintenance. The tenant also testified that there are pests in the rental building. The tenant said that the issues have been reported to the landlord but the landlord has failed to take adequate actions.

The tenant said that she has been charged a late fee of \$75.00 for a late rent payment in June, 2018. The parties agreed that the tenancy agreement does not contain a clause that late rent payments would be subject to a late fee.

The tenant also submits that they are charged a parking fee of \$25.00 when the tenancy agreement provides that the fee is only \$15.00. The tenant did not submit the full tenancy agreement into evidence, submitting only a few select pages which does not contain any reference to the parking fee.

The landlord testified that they have taken adequate action in response to the tenant's myriad of complaints. The landlord said that the balcony doors are scheduled to be reviewed and either repaired or replaced within one month. The landlord submits that the other issues the tenant requests be repaired are the natural wear and tear occurring from a long-term tenancy.

Analysis

Section 32 of the Act provides that a landlord must maintain residential property in a state of repair that complies with the health, safety and housing standards and makes it suitable for occupation by a tenant.

Section 33 further defines emergency repairs as 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.

I find that none of the repairs requested by the tenant fit the definition of an emergency repair. I find that all of the deficiencies submitted by the tenant are cosmetic in nature. The balcony door is located on the third floor of the rental building, and while the tenant submits that it could be used as an emergency exit in case of fire, I find that it is not an entrance giving access to the rental unit.

I find that the list of issues the tenant claims are not supported in documentary evidence and in any event, are cosmetic issues that do not affect the suitability of the suite for occupancy. A tenant cannot reside in a rental unit for a period of time and demand the landlord perform repairs and maintenance to reverse the effects of occupancy. I find that there is insufficient evidence to find that a repair order is warranted under the circumstances and accordingly dismiss this portion of the tenant's application.

The tenant claims that they are charged a higher parking fee than specified in the tenancy agreement. In the absence of the full tenancy agreement being submitted into evidence, and no evidence of any payments being charged or made for parking, I find that there is insufficient evidence in support of this portion of the tenant's application and accordingly dismiss it.

The tenant submits that they have been charged a \$75.00 late fee for late rent payment in June, 2018. The parties agree that the tenancy agreement does not provide that late fees will be charged on rent payments made after the first of each month.

Residential Tenancy Regulation 7 provides in relevant parts as follows:

- 7** (1) A landlord may charge any of the following non-refundable fees:
 - (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

As the parties have agreed that the tenancy agreement does not provide that late payment will be subject to a fee, I find that the landlord may not charge a late fee under this tenancy agreement. I find that the charge of \$75.00 is of no force or effect.

Conclusion

I dismiss the tenant's application for repairs and emergency repairs to the rental unit without leave to reapply.

I find that the late fee of \$75.00 charged by the landlord on June 8, 2018 is of no force or effect and the landlord is ordered against charging any late fees for this tenancy.

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: August 14, 2018

Residential Tenancy Branch