



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, ERP, RP

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting an Order for emergency repairs, an order for regular repairs and an order that the Landlords comply with the Act, regulations and/or tenancy agreement.

The Landlords and their legal counsel appeared for the scheduled hearing; the Tenant also appeared. She confirmed that the second named Tenant is her 14-year old daughter, and the Application was amended to remove her name as a party. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the 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, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

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.

The Tenant states that she feels entitled to a rent rebate for the emergency repairs that were needed and her requirement to move out of the rental unit for a period of time after her Application was filed; she testified that she had expenses for alternate accommodations as well. The Landlords’ counsel argued that the Application was not amended to include any monetary claim or request for a rent rebate, and that they had no notice of additional claims for expenses.

I have reviewed the Application and agree with the Landlords. The Application does not include a claim for monetary expenses or a rent rebate, nor was it subsequently amended to include such claims once the Tenants incurred these expenses. Accordingly, I am not considering these additional claims of the Tenant and I am not prepared to amend her Application at the time of the hearing, as this would be prejudicial to the Landlords who require disclosure of the full monetary claim in order to prepare a response.

The Landlords did request that I hear an Application brought by the Tenant which is scheduled to be heard October 18, 2018, in response to being served with a 10-Day Notice to End Tenancy. I declined hearing that matter as it is unrelated to the current matter and I had no opportunity to review the evidence or claim, which is scheduled with another Arbitrator. However, I did offer the parties an opportunity to mediate a settlement to cover all outstanding issues in both claims. After further discussion, the parties were unable to agree on rent arrears and I determined that the issue of ending the tenancy for rent arrears should proceed by way of the next hearing so that evidence could be presented and heard by the appointed Arbitrator.

Issues to be Decided

Are the Tenants entitled to an order for an emergency repair, pursuant to sections 33 and 62 of the Residential Tenancy Act ("Act")?

Are the Tenants entitled to an order for regular repairs, pursuant to section 32 of the Act?

Are the Tenants entitled to an order requiring the Landlords to comply with the Act, regulations and/or tenancy agreement, pursuant to section 62?

Background and Evidence

This tenancy began July 1, 2018, although the Tenant states she moved into the basement rental unit in late June. It was for a month-to-month tenancy for \$900.00 per month, payable on the first of each month. A security deposit of \$400.00 was to be paid to the Landlord.

On August 25, 2018, the Tenant awoke to find water had backed up through her shower floor drain and raw sewage was spilling into the rooms. She immediately advised the

Landlord living upstairs, who attended and flushed the toilet a couple of times and determined that there was no blockage.

The Tenant says the Landlord was not doing any repairs or taking any immediate action, and that he was demanding early payment of her September rent before taking any further action; at this point, the Tenant filed a claim with the Residential Tenancy Branch on August 28, 2018 for emergency repairs.

The Tenant built a “dam” to stop the water from running into the kitchen and she says she became quite ill; she spent considerable time cleaning and moving her belongings to prevent more damage; her dishes piled up as she could not use the water or more sewage would back up onto the floor.

The Landlords submitted photographs of some of this, which the Tenant states she did not permit access for them to take. The Tenant stated she and her daughter spent a night in a hotel arranged through child services, then she spent four nights in a tent in the yard to avoid the sewage issue inside. The Tenant states that she awoke to police because the Landlord had called stating that someone was living in the backyard that was going to murder him.

The Tenant says she contacted a plumber and the city during the first days, but everyone told her that only the homeowner could authorize an inspection and repairs. On August 26, 2018, the Tenant posted a handwritten letter to the Landlords on their door stating what emergency repairs were required; a photograph was submitted into evidence. The Tenant states she incurred another \$680.00 for alternate accommodations from August 31 to September 9th.

The Landlords state that they made timely repairs. A receipt for August 29th for an inspection was submitted, along with a receipt for a repair on August 31st; this took care of the plumbing blockage. The Tenant states that although the plumbing was repaired by August 31st, the rental unit was left a complete mess, with carpet torn up and drywall needed to be cut away from the bottom of the walls due to moisture.

The Landlords provided an asbestos report which states that the drywall in some rooms contains asbestos and that vacant possession is requirement to complete the repairs. They argue that the Tenant did not pay the September rent or the security deposit, and that she is not entitled to withhold rent because of a repair issue.

The Tenant states she attempted to pay cash for the October rent and left a note with the Landlords asking if they would accept it; she received no reply. The Landlords deny they received a note, and claim that the October rent is now unpaid.

The Tenant states she is a single mother without the means to pay for the alternate emergency accommodations for her and her daughter, on top of the September rent. She acknowledges that she owes rent for October but states that payment is being refused. She states that the Landlord waited until after she filed this Application to do any inspection or repairs, and that not one thing was done for the first five days, which caused further damage and expenses. The Tenant states she was served an eviction notice and assumes it was in retaliation for this Application.

Analysis

A tenant can apply for emergency repairs under section 33 of the Act, which reads:

- 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.*
- (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.*

The parties agree that the plumbing issue, which was the *emergency* repair, is now complete as of August 31, 2018. There is no evidence before me that the Tenant incurred costs to attend to the inspection and repair of the plumbing issue herself, and therefore there is no repair expense to reimburse under section 33. Accordingly, I am dismissing the Tenants' claim to complete emergency repairs as these have been completed.

The Tenant has also applied for regular repairs to be completed, and for an order that the Landlords comply with the Act. The Tenant states that drywall needs to be cut away from the flooring and replaced, carpeting and flooring needs replacing, and general cleaning to disinfect the rental unit for health reasons. The Landlord has a duty to make repairs under section 32 of the Act:

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.

The Landlords state they are unable to proceed with the required repairs at this time as vacant possession is required due to the presence of asbestos in some of the drywall materials. They were unable to state how many days would be required to eliminate the affected drywall materials to make the rental unit safe for occupancy.

The Tenant has satisfied me that repairs are needed to bring the rental unit up to a standard or condition fit for occupancy, as per section 32. The Landlords are required to hire restoration technicians to restore the rental unit to a condition suitable for occupation. While that work is being completed, the Landlords shall arrange for accommodation for the Tenant and her daughter at the Landlords' expense until the rental unit is deemed safe for occupancy by the restoration technicians. The Tenant is required to pay rent, unless ordered otherwise. This work is to be completed within one month of the date of this Order.

The parties may submit a copy of this decision into evidence at any subsequent related hearings.

Conclusion

The Tenants' claim for emergency repairs is dismissed.

The Tenants' claim for repairs to the rental unit, including drywall and flooring replacement as well as cleaning due to the sewage backup, is granted. The Landlords must retain qualified restoration technicians to investigate and to restore the rental unit to a condition suitable for occupation and the Landlords must complete the work no later than one month from the date of this decision. The Landlords must arrange and pay for

alternate accommodations for the Tenant and her family during any period of time when vacant possession is deemed necessary by the restoration technicians to do the repairs and remediation work.

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: October 10, 2018

Residential Tenancy Branch