



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peak Performance Ent. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for Repairs - Section 32;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant seeks an adjournment in order to obtain evidence contained in records held by 3rd parties that is relevant to the claim for compensation but is not yet available.

Rule 2.3 of the RTB Rules of Procedure provide that all claims in an application must be related to each other. As the claim for compensation is not relevant to repairs instead of adjourning this matter I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to repairs to the unit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on July 1, 2016. Rent of \$1,855.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$927.50 as a security deposit.

The Tenant states that all the repairs being claimed have been made and that the only outstanding issue is with the ongoing appearance, since October 2017, of soot or black material (the "Material") in the vents and the air. The Tenant states that this Material is affecting their air quality in the unit and that her son suffers from asthma. The Tenant states that it was initially thought that the dryer may have been the problem as it was found to be not properly vented. The Tenant states that on July 10, 2018 the Landlord had the dryer replaced and connected properly to the vent. The Tenant states that the Landlord replaced the furnace filter at the same time and that although the Landlord was to return to see if the filter turned black the Landlord never did. The Tenant states that she replaced the furnace filters herself on two later occasions. The Tenant states that each filter removed was covered with the Material. The Tenant states that if the problem is not with the furnace than there may be mold in the unit. It is noted that the Tenant did not make a claim or any reference in her application or amended application in relation to the presence of mold.

The Landlord states that the furnace should not be an issue as it's a clean air gas furnace. The Landlord states that he had a person who works in construction but is not a qualified gas fitter or hvac technician look at the furnace. The Landlord states that this person found nothing wrong. The Landlord agrees to have a gas fitter or hvac technician inspect the furnace no later than 5 p.m. on September 29, 2018 and that following this inspection, if repairs are necessary they will be made immediately or as soon thereafter as possible. The Landlord is adamant that the unit does not have any mold. The Tenant accepts the Landlord's agreement to inspect the repairs but is concerned that if the furnace is not the problem then mold may be the problem.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The Landlord has agreed to inspect the furnace and make repairs if necessary. In order to give effect to this agreement I order the Landlord to comply with its agreement. Should the Landlord fail to act as agreed the Tenant has leave to reapply for compensation.

As the Tenant did not detail any claim in the application or amended application in relation to mold I decline to make any orders in relation to the possible presence of mold. However as the Landlord has now been made aware of the Tenant's concerns with possible mold causing the presence of the Material and if the furnace does not require repairs or if repairs to the furnace does not correct the problem with the presence of the Material I strongly encourage the Landlord to take steps to further investigate the reason for the presence of the Material including the possibility of mold.

As a Landlord's obligation to maintain and make repairs to a unit is a continuing obligation throughout a tenancy should the Material continue to be present in the unit after the Landlord has inspected or made repairs to the furnace, the Tenant is at liberty to make an application seeking further orders for repairs to the unit and compensation for any damages that may arise from the Landlords failure to act or the Landlord's negligence in acting.

As the Tenant's application has met with some success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable.

Conclusion

The Landlord is ordered to have a gas fitter or hvac technician inspect the furnace no later than 5 p.m. on September 29, 2018 and following this inspection, if repairs are necessary, to make these repairs immediately or as soon thereafter as possible.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: September 13, 2018

Residential Tenancy Branch