



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ER

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- Order requiring the landlord to make emergency repairs to the rental unit, pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. I find the landlord was served pursuant to section 89.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Order requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to section 33.

Background and Evidence

The parties testified they entered into a 10-month fixed term tenancy agreement beginning October 31, 2017 and ending when the tenant vacated the unit on August 31, 2018. They stated the security deposit paid by the tenant had been returned by the landlord. A copy of the tenancy agreement was submitted as evidence.

The parties testified that the common hallway adjacent to the tenant's unit had undergone water damage in May 2017 following several plumbing failures. As a result, the carpet flooring had been saturated with water.

The tenant testified she informed the landlord on May 25, 2018 that the carpet was "squishy and wet". The landlord gave evidence he took immediate steps to correct the problem and the source of the water was eventually traced to a leaking bathtub in an upper unit.

Over the following weeks, the tenant stated the smell in the common hallway became overwhelming, especially as the landlord attempted to conceal the odour by using air freshener.

The tenant submitted photographs of fungi growing at the intersection of the baseboards and the carpet in the common hallway a few weeks after the water damage. She reported a strong smell of mold for several weeks afterwards.

The landlord testified he had diligently conducted all repairs and drying necessary following the water damage. The landlord stated there was no need at present for emergency repairs and the water damage had been fully repaired. The landlord testified the carpet was not replaced as there was no need to do so.

As the tenant vacated the unit on August 31, 2018, the tenant could provide no information contrary to the landlord's evidence.

Analysis

Section 6.6 of the Rules of Procedure state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 33 defines 'emergency repairs' as follows:

- 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.

The landlord provided uncontradicted evidence the repairs were undertaken and completed. As the tenant vacated the unit on August 31, 2018, the tenant was unable to establish the first criterion, that is, that the repairs are “urgent”.

As a result, I find the tenant has not established her claim. I dismiss the tenant’s claim without leave to reapply.

Conclusion

The tenant’s claim is dismissed without leave to reapply.

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 25, 2018

Residential Tenancy Branch