



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ERP RR

Introduction

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

- an Order for emergency repairs pursuant to section 33 of the *Act*; and
- an Order to reduce the rent for repairs, services or facilities agreed upon by not provided pursuant to section 65 of the *Act*.

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. Landlord's agent A.G. attended on behalf of the landlord and is herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding and evidence. Based on the undisputed testimonies of the parties, I find that the landlord was served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*.

The landlord confirmed that they did not submit any evidence in this matter.

Preliminary Issue – Tenant's Request to Amend Application

On December 13, 2018, the tenant filed a request to amend her Application for Dispute Resolution to add a claim to reduce rent for repairs, services or facilities agreed upon by not provided pursuant to section 65 of the *Act*.

Rules 4.3 and 4.6 of the Residential Tenancy Branch Rules of Procedure explain the time limits for amending an application, as follows:

4.3 Time limits for amending an application

Amended applications and supporting evidence should be submitted to the Residential Tenancy Branch directly or through a Service BC Office as soon as possible and in any event early enough to allow the applicant to comply with Rule 4.6.

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

As this hearing was scheduled and held on December 21, 2018, the tenant failed to file and serve her request for amendment at least 14 days before the hearing. Therefore, in accordance with the Rules of Procedure, at the beginning of the hearing I advised the tenant that her request to amend the application to add an additional claim was dismissed with liberty to reapply. However, through the course of the hearing, the parties were able to come to a settlement of their dispute which addresses the tenant's requested repairs and allows her to continue to pay reduced rent until the repairs are addressed by the agreed upon date. Therefore, I find that the tenant is not at liberty to reapply for a reduction in rent in relation to the repairs noted in her Application for Dispute Resolution dated November 14, 2018 as this issue has been addressed in the terms of the settlement.

Background

The parties explained that there was a prior arbitration hearing held between the parties on March 14, 2018, resulting in a settlement with terms that included repairs to be completed by the landlord. I have noted the file number pertaining to the prior hearing decision on the cover sheet of this decision.

The parties confirmed that the landlord had not completed all the repairs agreed to during the prior hearing. The tenant's current application has added additional repair requests. The tenant has also requested to have the issue of heating and the ant infestation addressed.

The parties confirmed that a handyman recently attended at the tenant's rental unit to document all of the tenant's requested repairs.

The landlord agreed to purchase three space heaters, for the tenant's living room, kitchen and bedroom, in order to address the issue of heat control for the tenant. The landlord was cautioned that the space heaters need to be labelled as safety certified and have an automatic tip-over shut-off feature.

The landlord explained that the ant infestation is affecting the entire rental property. The tenant's rental unit is a ground floor unit. The residents in the upstairs rental unit have not been cooperative with attempts to address the ant infestation. A previous assessment by a pest control technician indicated that food sources, such as pet food, in the neighbouring rental unit impedes a resolution to the infestation. The landlord agreed to have a professional pest control technician assess the tenant's rental unit to see if there are any treatments that can be done in her rental unit to mitigate the infestation in her unit. I explained to the tenant that she also has responsibilities to mitigate the infestation by being vigilant in cleaning up food attractants, such as crumbs or spilled food, which will continue to attract the ants into her rental unit. I noted to the tenant that in the video evidence she submitted showing ants in the microwave, the ants were feeding on some spilled food or crumbs in the microwave that had not been cleaned up.

The landlord expressed concerns that the tenant has not always been cooperative in allowing access to the rental unit to complete repairs. I advised the landlord that accessing the tenant's rental unit must be done in accordance with the *Act*, however as the tenant is requesting these repairs and not paying full rent as a result of the repairs not being done, the tenant must cooperate with providing the landlord with access to the rental unit to complete the work. In an effort to find a schedule that works best for both parties, the tenant was directed to provide the landlord with a preferred schedule of dates that the rental unit would be available for access to the landlord. However, the landlord is not required to accommodate only the tenant's preferred available schedule. If the tenant is not comfortable with allowing access in her absence, then it is the responsibility of the tenant to ensure that she arranges for a friend or family member to be there in her absence when access or repair work is scheduled to take place.

For the benefit of both parties, I have provided below the requirements under section 29 of the *Act* pertaining to landlord's access. If the parties have any questions about their rights and responsibilities under the *Act*, they are encouraged to contact the Residential Tenancy Branch and speak with an Information Officer for clarification.

- 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of the issue currently under dispute at this time:

1. The landlord agreed to purchase three safety-certified space heaters with tip-over automatic shut-off to address the tenant's concerns over heat control in her rental unit.
2. The landlord agreed to have a professional pest control technician assess the tenant's rental unit to recommend treatment options to mitigate the ant infestation issue.
3. The tenant agreed to cooperate with any pest control treatment plan, which includes ensuring food attractants in her rental unit, such as spilled food and crumbs, are promptly and thoroughly cleaned up.
4. The landlord agreed to undertake the following repairs to be completed by the end of January 31, 2019:
 - a. Framing around rental unit entrance door
 - b. Cabinet bottom shelf under the kitchen sink
 - c. Washroom vent
 - d. Kitchen window
 - e. Outstanding repairs not yet completed that were agreed to at prior arbitration hearing
5. To undertake the repairs, the landlord must provide notice to access the rental unit in accordance with the *Act*, however, the tenant is required to cooperate with the landlord in providing access to the rental unit as needed to complete the tenant's requested repairs.

6. As the landlord has agreed to make the tenant's requested repairs by the end of January, the tenant will begin paying the full amount of rent of \$1,050.00, as set out in the tenancy agreement, as of February 1, 2019.

The parties are still bound by all of the rights, responsibilities, terms, conditions and any statutory compensation provisions of the tenancy agreement, the *Act*, and the associated regulations.

Conclusion

The landlord agreed to complete the tenant's requested repairs by January 31, 2019 and the tenant agreed to pay her full amount of rent as of February 1, 2019.

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: December 24, 2018

Residential Tenancy Branch