



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI ERP LRE PSF RP RR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on January 7, 2019, at 11:00 am. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenants' application and evidence. The Tenant stated she did not receive the Landlord's evidence package. The Landlord provided a proof of mailing and sent his evidence by registered mail on December 21, 2018, to the rental unit. I note that failure to pick up registered mail is not a ground for review. Pursuant to section 88 and 90 of the *Act*, I find the Tenant is deemed to have received this package the fifth day after it was mailed, on December 26, 2018.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not repairs, or emergency repairs are required and whether or not there are emergency health and safety matters raised on this portion of the Tenants application. As a result, I exercised my discretion to dismiss all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claims:

- Are the Tenants entitled to an order requiring the Landlord to make emergency repairs for health or safety reasons?
- Are the Tenants entitled to an order requiring the Landlord to make repairs to the rental unit?

The Tenants' application for the remaining issues is dismissed, with leave to reapply. The focus of this hearing is related to the repairs needed.

Issue(s) to be Decided

- Are the Tenants entitled to an order requiring the Landlord to make emergency repairs for health or safety reasons?
- Are the Tenants entitled to an order requiring the Landlord to make repairs to the rental unit?

Background and Evidence

Both parties provided a substantial amount of testimony and evidence which was not directly related to the issue I am considering (repairs). I will only address the testimony and evidence which is pertinent to the issues I have identified above.

The Tenant testified that she has been a tenant in this rental unit for a couple of years now, and she feels there are some issues with the unit that need to be addressed. The Tenant stated that she lives there with her two children, who she also listed as Tenants. From here on, I will collectively refer to the Tenants as "the Tenant".

The Tenant stated that the refrigerator has been leaking water for over a year now, and often leaves pools of water on the floor. The Tenant stated that she often slips and trips

in the water, and it poses a danger to her and her children. The Tenant stated that she would like to have the refrigerator replaced, as it is old. The Tenant stated that she found a suitable used one, but the Landlord doesn't want to buy it.

The Tenant also stated that she smells gas in her rental unit, and wants the Landlord to look into the issue. The Tenant stated that she smells gas around the fireplace in her bedroom, and in order to block the smell, she has placed a mattress up against the fireplace to try to seal it off. However, the Tenant stated that she still smells the gas and would like the Landlord to fix it.

The Landlord stated that the Tenant is exaggerating the issues, and he has addressed them all already. The Landlord stated that he sent a repairman to fix the refrigerator last month, and he fixed a leaky pipe. The Landlord stated that the leak is now fixed and he does not want to replace the refrigerator if this one is still working fine. The Landlord stated that after the repair, there is nothing wrong with the fridge, yet the Tenant still wants a new one.

The Landlord also stated that the fireplace in the Tenant's bedroom is an old wood burning fireplace, and it is not gas, as the Tenant has asserted. The Landlord stated that he has been by several times and has not smelled gas. The Landlord stated that the Tenant's rental unit does not have any gas appliances in it, so he has no idea what the Tenant claims she smells. The Landlord also stated that the only gas appliance is in the adjacent rental unit, but he has checked with them, and they have confirmed that the smell is not originating from those appliances. The Landlord stated that there is no gas leak.

Analysis

First, I turn to Section 33(1) of the Act, which defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Based on the evidence before me, I find there is insufficient evidence to show that any potential refrigerator or gas fireplace issue, meets the definition of an “emergency repair”. As such, I dismiss the Tenants’ application to have the Landlord make emergency repairs for health or safety reasons on these items.

Next, I turn to section 32 of the Act:

Landlord and tenant obligations to repair and maintain

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.

After considering the evidence before me, I find it clear that there was an issue with the refrigerator. However, the Tenant acknowledges that the repairman came last month and fixed the leak. The Landlord also agrees on this point. Since the refrigerator has been fixed and the source of the leak has been remedied, I decline to make any orders with respect to repairs to this appliance. I note the Tenant wants a new fridge. However, it appears the current one is still functional. I decline to make any orders with regards to the replacement of the refrigerator, given it is currently sufficiently operating.

With respect to the Tenant’s allegations about the gas smell, I note she believes it is coming from the fireplace. However, I find it important to note that the fireplace the Tenant is referring to is not even gas, but rather a wood burning fireplace. I also note the Landlord has been over several times and never been able to smell any gas. I further note the Tenant does not even have any gas appliances in her rental unit, and the adjacent unit is the only one with any gas fired appliances. The Landlord has stated that he has consulted with them, and they cannot smell any gas, and they have reported no issues. Ultimately, it appears the Landlord has done some investigations but was unable to find or locate any smell. I find there is insufficient evidence that there is any issue with natural gas in this rental unit, such that I would make any orders to repair. I dismiss the Tenant’s request for repairs to fix the alleged gas leak.

I find the Tenant has failed to demonstrate that there is a need for a repair or emergency repair pursuant to section 32 and 33 of the Act.

Conclusion

The Tenant's application for repairs, and for emergency repairs, 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: January 8, 2019

Residential Tenancy Branch