



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, OLC, RR, MNDC, FF

Introduction

On January 21, 2019, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following:

- an order to make emergency repairs to the rental unit.
- for an order that the Landlord make repairs to the rental unit.
- for an order that the Landlord to comply with the Act, regulations, or tenancy agreement.
- For money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

Preliminary and Procedural Matters

The Tenants did not serve their documentary evidence to the Landlords in accordance with the Residential Tenancy Branch Rules of Procedure. The Tenants’ evidence was sent and received late and the Landlords submitted that they did not have enough time to consider and respond to the evidence. As such, The Tenants’ documentary was not considered.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. An Arbitrator may dismiss such matters with or without leave to reapply.

The hearing was scheduled on a priority basis based on the application requesting emergency repairs. Due to the issue with late disclosure of evidence, and the number of issues contained in the application; only the claims for repairs and emergency repairs were heard. The Tenant's claims for compensation are dismissed with leave to reapply.

Issues to be Decided

- Are the Tenants entitled to an order for the Landlord to make repairs and/or emergency repairs to the unit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on September 1, 2015, and is currently on a month to month basis. Rent in the amount of \$1,400.00 is due by the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$100.00 was paid by the Tenants to the Landlords. The tenancy agreement provides that the Tenants will pay 50% of hydro costs and 50% of oil costs. A copy of the tenancy agreement was provided.

Furnace

The Tenants are seeking to have emergency repairs made to the furnace. The Tenants testified that they started using the furnace in December 2018, and noticed fumes on January 30, 2019. The Tenants testified that they notified the Landlord about the furnace concerns using email sent on January 30, 2019. The Tenants testified that the Landlords responded seven days later and they said they would have someone look at the furnace as soon as possible.

The Tenants submitted that the Landlord arranged for the installation of a new furnace which was installed sometime around February 8, 2019. The Tenants testified that there is still a concern with the furnace as it is not working properly. The Tenants want an order for the Landlord to fix the furnace.

In reply, the Landlords testified that they had a furnace company replace the furnace with a new furnace. The Landlord testified that the service person informed the Landlord that the furnace requires a chimney liner to expel gases. The Landlords testified that they agree to make the repair and they are waiting on the availability of the service person to install the liner. The Landlord testified that he will check with the company following the hearing to have the work done as soon as possible.

Tree Branch

The Tenants testified that their concern regarding a tree branch on the rental property was resolved prior to the hearing. The Tenants testified that the tree branch was removed.

The Landlord testified that the tree branch was removed approximately one week prior to this hearing.

Drainage

The Tenants are seeking a repair order for the Landlord to deal with a drainage problem that is causing water to pool in the driveway. The Tenants submitted that water is pooling three to four inches deep in the driveway. The Tenants submitted that the pooling water affects their access into to the rental unit.

In reply, the Landlords testified that the water flows into a drain that goes into a pit. The Landlord testified that he contacted a drain service company two weeks ago and is awaiting their availability to attend the property.

Electrical

The Tenants submitted that the rental unit is not wired to support two suites. The Tenants submit that the breakers will blow and they have no direct access to the electrical panel. The Tenants submitted that they just want proof that the electrical wiring is safe.

In reply, the Landlords had a witness provide testimony. Mr. J.H. testified that he has been an electrician since 1989 and is a gold seal electrician. Mr. J.H. testified that the house was wired in 1970 to code. He submitted that the Tenants' have too many things plugged in. He testified that the breakers trip to protect the load. He testified that the electrical wiring is safe. He testified that he has been in the home and it is a load issue; not a safety issue.

Analysis

Section 32 of the Act states that 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.*

Section 33 of the Act states that "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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Furnace

I find that the tenancy agreement includes the use of a furnace for heating. I find that the furnace is part of the primary heating system of the rental unit. I accept the Tenants' testimony that the new furnace needs to be repaired and I accept the Landlords' testimony that the repair involves installation of a chimney liner to expel gases.

I find that the Landlord has already taken steps to have a chimney liner installed in the unit. The Landlord committed to having the chimney liner installed as soon as possible.

While I accept that the Landlord's ability to have the repairs completed is subject to availability of the service provider, I find it is reasonable that the repairs be completed within two weeks of the date of this decision. I order the Landlord to have the chimney liner work completed within two weeks.

Drainage

I accept the Tenants' testimony that water pooling on the driveway and is affecting their access into the unit. I accept the Landlord's testimony that he has already taken steps to have a service person attend the property to look at the issue.

I order the Landlord to have the drain inspected by a qualified person to determine the problem with drainage. I order the Landlord to have the drain inspected within two weeks of the date of this decision.

Electrical

Based on the testimony before me, I find that there are no repairs required to the electrical system of the rental unit. I accept the testimony of the Mr. J.H. that there is a load issue; not a

safety issue. I find that it is more likely than not that the load issue is due to having too many things plugged in.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful in their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I authorize the Tenants to deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Landlord is ordered to have the furnace issue repaired and the exterior drain inspected within two weeks of the date of this decision.

I authorize the Tenant to deduct the filing fee of \$100.00 from one (1) future rent payment.

The Tenants' have leave to reapply for the claims of compensation that were not heard.

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: February 20, 2019

Residential Tenancy Branch