



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STORMWELL ENTERPRISES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 24, 2019, (the "Application"). The Tenant also made an amendment to her Application on June 19, 2019 and applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order for emergency repairs;
- an order for regular repairs; and
- an order granting recovery of the filing fee.

The Tenant, Tenant's Agent, D.D., as the Landlord's Agent, I.K., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord in person on May 31, 2019. The Tenant stated that she made an amendment to her Application on June 19, 2019 to include a claim for regular repairs. The Tenant stated that she served a copy of the amendment to the Landlord by registered mail on June 20, 2019. I.K. confirmed receipt of both packages.

I.K. testified that he served the Tenant with the Landlord's documentary evidence by registered mail on June 7, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order for the Landlord to make emergency repairs to the rental unit, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to an order for the Landlord to make regular repairs to the rental unit, pursuant to Section 32 and 62 of the *Act*?
3. Is the Tenant entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 15, 2015. Currently, the Tenant pays rent in the amount of \$1,211.00. The Tenant paid a security deposit in the amount of \$547.50, which the Landlord continues to hold.

The parties agreed that there was a leak which occurred on May 17 and again on May 18, 2019 in the suite above the Tenant's rental unit. The Tenant stated that she reported the leaks to the Landlord as soon as she noticed them. The Tenant stated that the Landlord attended the rental unit, pulled back the wet carpet and underlay, and placed a fan, heater and dehumidifier to mitigate the damage.

The Tenant stated that she was concerned about the adequacy of the Landlord's mitigation as she observed that the impacted areas, including the washroom and the bedroom floor appeared to still be damp. The Tenant stated that she communicated this information to the Landlord, who did not take any further action.

The Tenant stated that she was unsatisfied with the Landlord's response to her concerns; therefore, she took it upon herself to hire a qualified disaster restoration services technician who conducted an inspection of the rental unit on May 31, 2019. The Tenant stated that she received the results of the inspection on June 4, 2019 which she has submitted into her evidence. The Tenant stated that she had not provided the Landlord with a copy of the inspection report until it was served as part of the Tenant's evidence package in preparation for this hearing.

The inspection revealed several areas of concern for potential mould growth due to the flooding. The inspection determined that there was mould growth on a track strip in the

bedroom closet, which requires replacement. The drywall in the closet was also noted as showing signs of water damage. It was suggested that the drywall be tested for asbestos prior to repairing the damaged drywall.

The inspection also revealed high levels of moisture in the bathroom, specifically the bulkhead above the bathtub, the bathtub tiles, the walls, and the floor. The inspection report provides pictures of the impacted areas, as well as evidence of the moisture meter readings. It was suggested that the Landlord replace the remaining moisture damaged building materials to prevent mould growth.

In response, the I.K. stated that he provided the Tenant with several options to restore the rental unit following the flood. I.K. stated that the Tenant chose the option of making an Application to order the Landlord to make a repairs as opposed to allowing the Landlord to make the necessary repairs and apply for dispute resolution after she was not satisfied with the repair. I.K. stated that he has experience in remediating over 300 floods. I.K. stated that he inspected the rental unit in mid-June 2019, at which point he determined that the moisture levels were back to normal and that the affected areas appeared to be dry. I.K. stated that the only thing left to do is to reinstall the underlay and carpet. I.K. doesn't believe that there is any further concern relating to the water damage.

The Tenant is claiming that the Landlord retain the services of a licensed restoration company to inspect, assess and where work is required to repair the rental unit to a state whereby the Tenant has access to a safe and healthy internal environment free of mould.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 32 of the Act;

(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...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...

Section 33 of the Act states; "**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, ...

In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the damage caused by the flood in her rental unit merits an order for emergency repairs. As such, I dismiss this portion of the Tenant's claim without leave to reapply.

The Tenant has also applied for an order for regular repairs. In this case, I find that the inspection conducted by a licensed restoration company outlined several areas of concern which appear to be reasonable given the situation. I find that the Landlord has provided insufficient evidence to demonstrate that the areas affected by the flood are now dry and that there is no further risk of mould growth. I find that the Tenant has established that the Landlord has not maintained the premises in accordance with section 32 of the Act, nor has the Landlord undertaken adequate repairs in a timely fashion.

In light of the above, and in accordance with Section 65 of the Act, I order the Landlord to retain the services of a licensed restoration company to inspect, assess and where work is required to repair the rental unit to a state whereby the Tenant has access to a safe and healthy internal environment free of mould and rot.

I order the Landlord to undertake these inspections and repairs as soon as possible, but no later than July 31, 2019. Should the Landlord not comply with this order, the Tenant is at liberty to reapply for monetary compensation, including a reduction of monthly rent, under the *Act*.

As the Tenant has been successful in this Application, I order the Tenant to recover their \$100.00 filing fee for the Application from the Landlord, by reducing their next monthly rent payment by \$100.00.

Conclusion

The Landlord has failed to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I order that the Landlord retain the services of a licensed restoration company to inspect, assess and where work is required to repair the rental unit to a state whereby the Tenant has access to a safe and healthy internal environment free of mould and rot.

The Tenant is entitled to recover the \$100.00 filing fee for their Application. The Tenant is permitted to deduct this amount from her next rent payment.

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: July 12, 2019

Residential Tenancy Branch