



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LONG BEACH GAS N GO JADE OREL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:54 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The tenant testified that they sent the landlord a copy of their dispute resolution hearing package and written evidence by registered mail on September 17, 2019. They entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt. They also gave undisputed sworn testimony that the landlord's manager, identified by the tenant as JO in their application, told them that they had received the tenant's dispute resolution hearing package by registered mail. Pursuant to sections 88,89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's hearing package and written evidence on September 22, 2019, five days after the registered mailing of these documents.

During the course of this hearing, the tenant initially testified that the landlord served them with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on September 16, 2019. They later modified this testimony, advising that the 10 Day Notice was served on September 10, 2019. The tenant confirmed that they had not paid rent since July 2019 and that they had not submitted any separate application to cancel the landlord's 10 Day Notice, which identified \$4,300.00 in unpaid rent owing as of September 10, 2019. Although the tenant believed that their current application for dispute resolution submitted on September 13, 2019 was an application to cancel the landlord's 10 Day Notice, I advised the tenant that there is no mention of the 10 Day Notice in the tenant's application. The tenant did not supply any copy of the landlord's 10 Day Notice in the material they provided in support of their application. There is also no mention of any request for a monetary award for the loss in the value of their tenancy in the tenant's application,. The only reference to a monetary award sought by the tenant was for the recovery of the tenant's \$100.00 filing fee for this application.

At the hearing, I advised the tenant that I can only consider matters that were included in their application for dispute resolution. To do otherwise would deny the landlord an opportunity to address the case against them and would constitute a denial of a fundamental principle of natural justice.

Issues(s) to be Decided

Should any orders be issued against the landlord requiring the landlord to undertake emergency repairs to the rental unit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant said that they signed a one-year fixed term Residential Tenancy Agreement (the Agreement) that was to enable them to occupy the landlord's manufactured home for the period from October 1, 2018 until September 30, 2019. They said that the landlord never provided them with a copy of that Agreement. Monthly rent is set at \$1,650.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$825.00 security deposit.

The tenant maintained that the landlord has failed to repair the furnace for this rental unit, which the tenant believes is an oil furnace. The tenant gave undisputed sworn testimony that they replaced the thermostat in the manufactured home shortly after they

moved into the rental unit, but that this replacement did not prompt the furnace to begin operating. The tenant said that they have notified the landlord that the furnace was not working a number of times and have been relying on a series of space heaters which use a lot of electricity since moving into this manufactured home.

The tenant gave sworn testimony, supported by written evidence, that the oven in the stove of this rental unit has not been operating since December 2018. They also maintained that the washing machine does not function properly, requiring the tenant to run the spin cycle a number of times to remove enough water to enable the tenant to place laundry in the dryer following their cleaning in the washing machine. The tenant also complained that black mould surfaced within a week or two of the tenant cleaning this mould from walls and windows in the manufactured home. The tenant also requested repairs to the skirting of this manufactured home, as the existing skirting is damaged and presents an opportunity for rodents to enter the premises. The tenant entered into written evidence copies of emails and text messages exchanged with the landlord to confirm that the landlord has been notified of these deficiencies in the rental unit and has taken no action to resolve these concerns.

Analysis

As was noted above, the only issues before me are the tenant's request for emergency repairs to the rental unit and for the recovery of their filing fee. The tenant provided no evidence that they have incurred direct costs to repair any of the items identified as deficient in their application.

Under these circumstances, I find that there is undisputed sworn testimony and written evidence that emergency repairs need to be undertaken for this tenancy. For this reason, and in accordance with section 33 of the *Act*, I order the landlord to complete the following repairs to this rental unit as soon as possible:

1. restore a properly functioning furnace to this rental unit;
2. repair or replace the oven in this rental unit such that it can be effectively used;
3. repair or replace the washing machine; and
4. secure the services of a qualified tradesperson to review and address problems of mould within the rental unit.

In the event that all of the above measures have not been undertaken by November 1, 2019 and the landlord has not obtained legal authority to end this tenancy, the tenant

will be allowed to reduce their next scheduled monthly rent payment by \$825.00. This reduced monthly rent will remain in place until the month after all of the above-noted repairs have been completed. In the event that this tenancy is still in effect as of January 1, 2020, the landlord has not obtained legal authority to end this tenancy, and the above-noted repairs have not been completed, I order that the tenant will not have to pay any monthly rent for future months until the month after the landlord has completed these repairs.

Since the tenant has been successful in this application, I allow the tenant to recover their \$100.00 filing fee from the landlord. As the tenant testified that there remains outstanding rent that has not been paid to the landlord, this \$100.00 amount is deducted from the tenant's outstanding rent.

Conclusion

Pursuant to section 33 of the *Act*, and as there is undisputed sworn testimony that the landlord has not taken action to obtain possession of this rental unit in accordance with the *Act*, I order the landlord to:

1. restore a properly functioning furnace to this rental unit;
2. repair or replace the oven in this rental unit such that it can be effectively used;
3. repair or replace the washing machine; and
4. secure the services of a qualified tradesperson to review and address problems of mould within the rental unit.

In the event that all of the above measures have not been undertaken by November 1, 2019 and the landlord has not obtained legal authority to end this tenancy by that time, the tenant will be allowed to reduce their next scheduled monthly rent payment by \$825.00. This reduced monthly rent will remain in place until the month after all of the above-noted repairs have been completed. In the event that this tenancy is still in effect as of January 1, 2020, the landlord has not obtained legal authority to end this tenancy, and the above-noted repairs have not been completed, I order that the tenant will not have to pay any monthly rent until the month after the landlord has completed these repairs.

Since the tenant's current application is successful, I allow the tenant to deduct the \$100.00 cost of their filing fee from the amount of unpaid rent owed to the landlord.

In coming to these determinations, I emphasize that no Notice to End Tenancy was before me, nor was there any application from either party for a monetary award, save for the tenant's application to recover their \$100.00 filing fee from the landlord.

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: October 10, 2019

Residential Tenancy Branch