



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FF

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;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package by placing it in the landlord's mail slot at the landlord's request. Both parties confirmed the tenant served part 1 of 2 only of the tenant's documentary evidence to the landlord with the notice of hearing package. Both parties confirmed the landlord served the tenant with the submitted documentary evidence by posting it on the tenant's door on September 23, 2019. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package as per sections 88 and 89 of the Act. Regarding the tenant's second documentary evidence package, I find that as this submitted late and not served upon the landlord that a breach of the rules of procedure have occurred and that this evidence is highly prejudicial to the landlord. As such, this second package is excluded from consideration in this hearing. Neither party raised any other service issues. As both parties have confirmed that the landlord has served the tenant with the submitted documentary evidence, I find that the tenant is deemed sufficiently served as per section 90 of the Act.

At the outset, the tenant's application was clarified. The tenant had listed the landlord's mailing address as her own, but later served the landlord at his residence by placing it in the mail slot at the landlord's request. At the conclusion of the hearing, the landlord provided his mailing address to update the respondent details in the file. The tenant indicated during the hearing that she no longer resides at the rental unit.

The tenant's application was clarified in that she only seeks an order for emergency repairs to have a mold test done at the landlord's expense.

Issue(s) to be Decided

Is the tenant entitled to an order for emergency repairs?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks an order for the landlord to make emergency repairs for health or safety reasons. The tenant has contacted the landlord to make the repairs, but they have not been completed. That emergency repair was clarified as a mold test to determine if there is mold.

The tenant claims that her rental unit has black mold and unfinished repairs due to many instances of a leaky roof in multiple areas. The ceiling is covered in stains and previous cut outs from past repairs. The landlord was notified how badly this mold affected the tenant's health and the local authority has inspected and confirmed substantial mold.

During the hearing the tenant clarified that she had already had a mold test done herself and was still waiting for the results.

The landlord disputes the tenant's request as a delay tactic since she has refused to pay rent for the last two months.

Analysis

Section 33 of the Act describes “emergency repairs” as those 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 purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

If a tenant has attempted unsuccessfully to have the landlord complete emergency repairs, subsection 33(5) of the Act requires a landlord to reimburse a tenant for emergency repairs if, the tenant claims reimbursement from the landlord and provides the landlord a written account of the emergency repairs accompanied by receipts for the amounts claimed. If the landlord does not reimburse the tenant, then the tenant may deduct the amount from rent or otherwise recover the amount (Act, s. 33(7)).

In this case, the tenant has claimed that black mold exists in her rental unit and as a result her health and safety are being affected. The tenant has requested that a mold test be done, but has indicated that one was done and is awaiting the results. The tenant has also stated that she had vacated the rental unit and is no longer residing in the rental unit. As such, I find that the tenant’s request does not fall within the above noted parameters for emergency repairs. I also find that the tenant’s request is redundant as she has vacated the premises. The tenant has failed to establish a claim for emergency repairs.

Conclusion

The tenant’s application 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: October 01, 2019

Residential Tenancy Branch