



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *RP, RR, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order directing the landlord to have repairs done and reduce rent. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself and the landlord was accompanied by his agent.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence and stated that he had served his evidence on the tenant in person. The tenant denied having received the landlord's evidence. Since the landlord did not have proof of service of his evidence on the tenant, his evidence was not used in the making of this decision. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Has the landlord fulfilled his responsibilities as a landlord with regard to maintenance and repairs? Is the tenant entitled to a rent reduction and the filing fee?

Background and Evidence

Right from the start of the hearing the parties could not agree on several aspects of the tenancy which included service of evidence, start of tenancy and monthly rent.

The rental unit consists of a two-bedroom suite located in the basement of a duplex. In her application for dispute resolution, the tenant referred to the suite as being located on the main floor. The main floor is rented out separately and the landlord occupies the entire other half of the duplex.

The tenant stated that the monthly rent is \$1,175.00 while the landlord stated the rent is \$1,025.00. The tenant stated that she always paid in cash to the male landlord and later in the hearing she stated that sometimes she pays rent to the landlord's wife or son. The landlord stated that the female tenant does not pay rent directly to him. He stated that rent is paid to him, by the tenant's husband.

The tenant stated that mold is present in the rental unit and filed photographs to support her testimony. She stated that she notified the landlord and he did not take action. The landlord stated that the tenant did not notify him of any problems and in his interactions with the male tenant, the issue of mold was not brought up. The tenant agreed that she did not notify the landlord in writing.

The tenant wants the landlord to replace tile in the washroom as the grout is moldy and to replace the carpet which has water stains and is very old. The landlord stated that the carpet was brand new at the start of tenancy. The tenant is claiming a rent reduction of \$950.00 per month until the landlord carries out repairs and replaces the carpet.

Analysis

Section 32 of the *Residential Tenancy Act*, addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the tenant stated that she notified the landlord of the repairs that were needed by verbally informing him. The landlord denied having been informed of problems that needed repairs.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, that the claim is justified.

When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail. In this case, the parties offered contradictory testimony and did not provide documentary evidence to support their versions of events.

Based on the testimony of both parties, I find on a balance of probabilities that it is more likely than not that the tenant has not yet notified the landlord, in writing, of the alleged problems in the rental unit and therefore has not given the landlord the opportunity to repair or resolve the issues. I order the tenant to provide the landlord with a written list of issues and allow the landlord adequate time to carry out repairs. The tenant is free to make an application for dispute resolution if the landlord does not take steps to carry out the required repairs.

Since the tenant has not proven her case, she must bear the cost of filing this application.

Conclusion

The tenant's application is dismissed.

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 15, 2019

Residential Tenancy Branch