



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 14, 2019 (the "Application"). The Tenant applied for an order that the Landlord make emergency repairs.

The Tenant appeared at the hearing with the Advocate. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Agent provided the correct name of the Landlord which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and all documentary evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

I note that the Tenant provided written submissions which include a request for compensation at page four. I advised the Tenant at the hearing that I would not consider a request for compensation as this was not included on the Application. The Tenant also wanted to discuss repairs not noted on the Application. I advised the Tenant I could only consider repairs specifically requested on the Application.

Issue to be Decided

1. Is the Tenant entitled to an order that the Landlord make emergency repairs?

Background and Evidence

The Tenant had submitted a list of requested repairs in the written material. At the hearing, the Tenant confirmed many of these had been addressed. The only repairs listed on the Application and not addressed at the time of the hearing were:

1. Repair of air conditioner
2. Repair of stairs on the deck

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, Tenant and a co-tenant. The tenancy started June 01, 2019 and is for a fixed term ending May 31, 2021. Rent is \$2,850.00 per month due on the first day of each month.

1. Repair of air conditioner

The Tenant testified as follows in relation to the air conditioner. The air conditioner was not working when she moved in. Someone came to assess the air conditioner three times. This individual said it does not work and is not the right capacity for the size of the house. This individual said the main issue is the ducting in the house as it is too small and improperly installed. This individual also said the location of the exhaust pipes is a hazard as they are too close to the house. The air conditioner does not work well in thirty-degree heat. The upstairs of the house was 29 degrees in June, July and August. Cleaning the ducts would assist.

The Tenant testified that the air conditioning was not discussed at the time of entering into the tenancy agreement but that the house was advertised as having air conditioning.

In the written materials, the Tenant states that the technician said the air conditioner is working, the issue is it is not the right size for the house.

The Tenant testified and stated in her written materials that the temperature of the house is important due to her medical issues.

The Agent testified as follows. The house was built in 1984 and is 3,000 square feet. A three-and-a-half-ton air conditioning unit was installed in 2013. The air conditioner is the right size for the house. There was an issue with the air conditioner that was fixed. She confirmed with the technician that he did not tell the Tenant what the Tenant is saying he did. The technician did not say the air conditioner is not working. The technician would not have talked to the Tenant about the air conditioner and could not have confirmed the size of ducting in the house.

The Agent testified that the exhaust pipes referred to by the Tenant are a separate issue from the air conditioner.

The Landlord submitted information from a website showing that the appropriate size of air conditioner for the house is between a 2.5 ton and 3 ton unit.

2. Repair of stairs on the deck

The Tenant testified that she had fixed the stairs but that this was just temporary.

The parties agreed on the following:

The Landlord will send a contractor to the rental unit to look at and assess the back deck stairs within two weeks of the date of this decision. If the contractor determines that the stairs are safe and do not require further work, no further work will be done on the stairs. If the contractor determines that the stairs are not safe and require further work, the Landlord will have the stairs fixed.

Analysis

1. Repair of air conditioner

The definition of emergency repairs is set out in section 33 of the *Act*. As stated during the hearing, I am not satisfied that the air conditioning constitutes an emergency repair. However, I will not go into this further as I have considered whether the Tenant is entitled to an order that the Landlord repair the air conditioner whether it is an emergency repair or regular repair.

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.”

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties disagreed about whether the air conditioner is working, whether it is the appropriate size for the house and whether there is an issue with the ducting. In the absence of a report or further information from someone qualified to assess the air conditioner, I am not satisfied it is not working, that it is not the appropriate size for the house or that there is an issue with the ducting. I also note that the Tenant’s written submissions seem to suggest that the air conditioner is working, it simply does not adequately cool the house. Further, the Landlord submitted information that suggests the air conditioner is an adequate size for the house.

In the absence of further evidence, I am not satisfied the exhaust pipes mentioned relate to the air conditioner. Nor am I satisfied the Landlord needs to address an issue with the exhaust pipes in the absence of evidence from someone qualified to assess the exhaust pipes.

Given the testimony and evidence provided, I find the Tenant’s request is more akin to a request for an upgrade of the air conditioner versus a request for repair as I am not satisfied the air conditioner or related parts are broken. The Tenant did not discuss the air conditioner with the Landlord prior to entering into the tenancy agreement. The Tenant submitted evidence showing the temperature of the house. However, in the absence of further evidence, I am not satisfied the Landlord has failed to comply with section 32 of the *Act*. I am not satisfied the Landlord is required to upgrade the air conditioning unit in the circumstances.

2. Repair of stairs on the deck

The parties came to an agreement about repair of the stairs on the deck and, based on this agreement, **I order the following** pursuant to section 62 of the *Act*:

The Landlord must send a qualified contractor to the rental unit to look at and assess the back deck stairs within two weeks of the date of this decision. If the contractor determines that the stairs are safe and do not require further work, the Landlord is not required to have further work done. If the contractor determines that the stairs are not safe or require further work, the Landlord must have the stairs fixed within a reasonable period.

Conclusion

I am not satisfied the Tenant is entitled to an order that the Landlord repair the air conditioner. This request is dismissed without leave to re-apply.

I order the following in relation to the back deck stairs:

The Landlord must send a qualified contractor to the rental unit to look at and assess the back deck stairs within two weeks of the date of this decision. If the contractor determines that the stairs are safe and do not require further work, the Landlord is not required to have further work done. If the contractor determines that the stairs are not safe or require further work, the Landlord must have the stairs fixed within a reasonable period.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 28, 2019

Residential Tenancy Branch