



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

On September 24, 2019, the Tenant applied for a Dispute Resolution proceeding seeking an Emergency Repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

Both the Tenant and the Landlord attended the hearing. All parties provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by registered mail and the Landlord confirmed that she received this on October 10, 2019. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package.

The Landlord advised that she served her evidence to the Tenant by hand on October 14, 2019, while accompanied by an RCMP officer. The Tenant confirmed that she received this evidence. In addition, the Landlord submitted late evidence on the day of the hearing, but she did not serve this evidence to the Tenant. Consequently, the Landlord’s evidence served prior to the hearing was accepted and considered when rendering this decision. However, the Landlord’s late evidence was excluded and not considered when rendering this decision. The Landlord was allowed to speak to this late evidence during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair Order?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 15, 2019 and rent is established at \$1,500.00 per month, due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that when she moved into the rental unit, she noticed a leak and did not inform the Landlord of this right away. She observed an increasing amount of water come from a faucet behind the wall where the main water shut-off valve was located. This was a slow leak that led to her observations of “black and blue” mould. She stated that she made multiple requests to the Landlord to fix this issue, but nothing was done so she wrote a letter to the Landlord, dated September 11, 2019, requesting that the Landlord rectify this issue. She stated that the air quality in the rental unit is humid, that there is constant water coming out of the wall, and that this pipe burst on the night of October 21, 2019, leading to two inches of standing water in the basement. As a result, she advised that she turned off the main water valve.

The Landlord advised that she received a call from the Tenant on the night of October 21, 2019 regarding the burst pipe and she attended the rental unit, accompanied by the RCMP. She acknowledged that there was a “small puddle” but there was no flood, that the RCMP officer confirmed this as well, and that the officer advised the Tenant that this was not an emergency. She advised that she had called a plumber and because it was not an emergency, the plumber was due to arrive to address the leak issue around the time of the hearing.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 33 of the *Act* outlines the Landlord's and Tenant's duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

Emergency repairs

- 33** (1) In this section, "**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, or**
 - (vi) in prescribed circumstances, a rental unit or residential property.**
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;**
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;**
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.**
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
- (a) claims reimbursement for those amounts from the landlord, and**
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.**
- (7) **If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.**

I find it important to note that the burden of proof lies on the party making the Application to substantiate the claims being made. When reviewing the evidence presented by the Tenant, the main issue in this Application appears to be due to her claims of a leak. However, based on the limited evidence provided by the Tenant, I am not satisfied that if there is a leak in the pipes, that it falls into the category of a "major leak" or is a "damaged or blocked water or sewer pipe or plumbing fixture" as defined under the emergency repair Section of the *Act*.

Furthermore, while I can reasonably infer that the Tenant's reference to "black and blue mould" is another reason for her request for an emergency repair, other than her simply stating that this may be present in the rental unit, I do not find that the Tenant has submitted sufficient or compelling evidence that there is this mould present, nor has she submitted any documentation that if this is present, how it is unsafe or a hazard pursuant to the emergency repair Section of the *Act*.

As the Tenant has provided insufficient evidence to corroborate that the "emergency repairs" sought constituted a repair that is urgent or necessary for the health or safety of anyone or for the preservation or use of the rental unit, I am satisfied that the granting of an emergency repair Order has not been substantiated. As such, I dismiss the Tenant's Application in its entirety.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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 24, 2019

Residential Tenancy Branch