



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

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

- an order requiring the landlords to complete emergency repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, "male landlord" and female landlord ("landlord"), the male landlord's English language interpreter, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 57 minutes.

The male landlord confirmed that the female landlord and his English language interpreter had permission to speak on his behalf. The tenant confirmed that his agent had permission to speak on his behalf. The tenant's witness was excluded from the outset of the hearing and returned later for his testimony. Both parties had equal opportunities to question the tenant's witness.

The landlord confirmed receipt of the tenant's application for dispute resolution, notice of hearing, and demand letter. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application, notice of hearing and demand letter.

The landlord stated that she did not receive a copy of the tenant's photographic evidence. The tenant and the tenant's agent both confirmed that they included the photographs in the tenant's original application package sent to the landlords on October 7, 2019, by way of registered mail and received by the landlords. The tenant's

agent provided two Canada Post tracking numbers verbally during the hearing, claiming that the mail was delivered to and signed by the landlords on October 9, 2019. In accordance with sections 88 and 90 of the *Act*, I find that both landlords were deemed served with the tenant's photographic evidence on October 12, 2019, five days after their registered mailings. I notified both parties that I would consider the tenant's photographic evidence because the tenant and his agent both confirmed that they witnessed the photographs being put in the original application package sent to the landlords by mail and the landlords received the mailed application packages.

The tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' evidence package.

Issues

Is the tenant entitled to an order requiring the landlords to complete emergency repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on March 1, 2018 for a fixed term ending on February 20, 2020. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. No written tenancy agreement was signed, only a verbal agreement was reached. The landlords have a tenancy agreement with the owner of the rental unit, where they are the primary tenants renting the entire rental unit, which is a house. The landlords reside in the same house as the tenant, with whom they have sublet a portion of the rental unit of three bedrooms and two bathrooms. The tenant continues to reside in the rental unit.

Both parties agreed that they attended a previous Residential Tenancy Branch ("RTB") hearing on September 23, 2019, after which a decision of the same date was issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. The Arbitrator at the previous hearing decided that he had jurisdiction to hear the application because the parties did not share a kitchen or bathroom and the tenant had a separate unit from the landlords' unit.

The tenant stated that he requires the landlords to reinstall the wall and door inside the rental unit that they removed without his permission on September 28, 2019. The

tenant stated that this wall and door separated his living area from the landlords' living area inside the rental unit. The tenant maintained that his children do not feel safe visiting him at the rental unit now and he has lost his privacy.

The tenant explained that the landlords and the owner of the rental unit gave him verbal permission to build the wall and door inside the unit, which he built at his own cost at the beginning of his tenancy. The tenant said that the landlords only removed this area because of the previous hearing decision where the Arbitrator found that the landlords and tenant were not sharing a kitchen and bathroom and the landlords had not given a legal notice to end tenancy on the proper RTB form to the tenant. He stated that nothing was done by the landlords to remove the door and wall for over 1.5 years after it was built.

The tenant's witness testified that he built the door and wall inside the rental unit, at the request of the tenant. He claimed that it was done for security purposes to separate the tenant's rooms from the rest of the house. He said that it was done with the landlords' permission because the landlord was present and helped to paint and clean the areas after the work was done. He provided an invoice for \$2,000.00 for the work he did. He explained that he thinks that the landlords and tenant had a deal to build the wall and door. The tenant's witness stated that he did not require a permit from the City because the door and wall were not structural repairs to the house.

The landlords oppose the tenant's claim. The landlord stated that the tenant did not have written or verbal permission from the landlords or the owner to build the wall and door inside the rental unit, which was done in February 2018. She said that the wall was built over the fire detector. She maintained that the tenant did not obtain a permit from the City to build the wall or door.

The landlord explained that the landlords removed the wall and door on September 30, 2019. She claimed that the City inspector visited the rental unit on August 5, 2019 and told the landlords that they cannot accept rent from the tenant's separate unit. The landlord confirmed that on March 21, 2018, she received a note from the owner of the rental unit who thought that the landlords built the wall and door inside the rental unit. She maintained that she had permission from the owner's property management company to remove the wall and door inside the rental unit because the company did not want to get involved.

Analysis

I find that I have jurisdiction to hear this application because I find that the tenant and owner of the rental unit do not share a kitchen or bathroom, as per section 4(c) of the *Act*. The owner of the rental unit does not live at the house, only the landlords, who are the main tenants, live there.

Section 31(3) of the *Act* states the following:

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Both parties agreed that the tenant did not have written permission from the landlords or owner to build the door or wall inside the rental unit. I find that the door and wall provide a means that gives access to the tenant's rental unit, as both parties agreed that the door and wall separate the tenant's unit from the landlords' unit. As per section 31(3) of the *Act*, I find that the tenant did not have written permission from the landlords or owner to build the door and wall that provides access to his rental unit. Therefore, I find that the landlords are not required to rebuild the tenant's wall and door that they took down at the rental unit. I also find that the tenant did not have an order from an RTB Director or Arbitrator to build the wall or door that provides access inside the rental unit.

As the tenant was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenant's entire 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: November 12, 2019

Residential Tenancy Branch