



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This expedited hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order requiring the landlord to make emergency repairs to the rental unit.

The tenant and his representative attended the telephone conference call hearing; the landlord did not attend.

The tenant testified that they served the landlord with their Application for Dispute Resolution and Notice of Hearing by registered mail and by personally handing the documents to the landlord, who lives on the same parcel of land, both on December 4, 2019. The tenant provided the copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. This number is located on the style of cause page in this Decision. The tenant also provided a witnessed, signed statement as to the personal delivery of the documents.

Based upon the submissions of the tenant, I accept the landlord was sufficiently served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The hearing process was explained to the tenant and they were given an opportunity to ask questions about the hearing process. Thereafter, the tenant and representative were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters-

The application lists as tenant, DH; however, during the hearing the parties disclosed that DH was not a listed tenant on the tenancy agreement and that he was an occupant in the rental unit. I have therefore excluded DH from any further consideration in this matter.

Additionally, the representative here, LM, the tenant's grandmother, is a co-signor of the tenancy agreement as the tenant is a minor and the landlord required her signature.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Background and Evidence

The tenant submitted a copy of the written tenancy agreement, showing that the tenancy began on June 1, 2019, for a monthly rent of \$1,600.00. The tenant also paid a security deposit of \$1,600.00 at the beginning of the tenancy, as listed in the tenancy agreement.

At to their request for emergency repairs, the tenant and LM submitted the rental unit has baseboard heating, which the landlord has told them not to use as the wiring is suspect. The tenant said that he has had to purchase space heaters, but that they do still not adequately heat the home.

The tenant submitted that the electrical system is not working properly and that only half the breaker panel is functional. Additionally, there is no power to the back bedroom and some of the light and electrical outlets do not work.

The tenant submitted that they often do not have an adequate supply of water, particularly in the morning when trying to take showers. When he alerts the landlord to

this issue, the water returns full blast. The tenant explained that the water is supplied by a well, which also supplies the landlord's home.

Other times, according to the tenant, they have no water.

The tenant submitted that they have made repeated verbal and written requests to the landlord for the repairs, yet he has ignored all of them. The only response from the landlord is to threaten eviction.

The tenant submitted further that the refrigerator has stopped working as of November 18, 2019, that they have asked the landlord in writing to either fix it or replace it, and he has not. The tenant submitted that they have lost food as a result of the malfunctioning refrigerator.

The tenant submitted further that the move-in condition inspection report (CIR) submitted into evidence show many repairs to be made, but very few have been done.

Analysis

Based on the foregoing evidence, and on a balance of probabilities, I find as follows:

Section 33 of the *Act* requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made for the purpose of repairing the following: major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit or the electrical system.

On the basis of the undisputed evidence, I find the tenant submitted sufficient evidence to show that the primary heating and the electrical systems in the rental unit are not working or functioning properly. I also find the tenant submitted sufficient evidence to show the landlord has been notified of the issues and that he has failed to respond.

I find these are emergency repairs as defined under the *Act*, for which the landlord is responsible.

Pursuant to section 62(3) of the *Act*, I therefore order the landlord to hire a licensed, professional electrician and/or heating repair person, if the electrician is unable to repair the heating system, no later than December 31, 2019, in order to assess and

recommend the repair and correction of the entire electrical and heating system in the rental unit.

I Order that these recommended repairs be undertaken and completed by the licensed, professional electrician and/or heating repair person within a reasonable period of time, but no later than January 20, 2020. Once all Ordered repairs are completed the landlord must give the tenant written confirmation they are completed.

Although the tenant submitted evidence concerning water issues, I find the evidence was insufficient to show that this was a plumbing issue under section 33 as to emergency repairs. The tenant is at liberty to make a further application to deal with regular repairs to the rental unit for this issue.

Other orders and issues-

Although the matter concerning the non-working refrigerator is not an emergency issue as defined under the Act, under section 32, a landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

On the basis of the undisputed evidence, I find the tenant has provided sufficient evidence to show that the refrigerator is not functioning properly, that they have notified the landlord, and that the landlord has failed to repair or replace the refrigerator.

In these circumstances, I find it appropriate to and I therefore Order, pursuant to section 32 and 62(3) of the Act, the landlord to immediately repair or replace the refrigerator in the rental unit.

I Order that this repair be completed within a reasonable period of time, but no later than January 15, 2020. Once the Ordered repair to the refrigerator is completed, the landlord must give the tenant written confirmation they are completed.

Additionally, under section 19 of the Act, the landlord must not require or accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. If a landlord accepts a security deposit that is greater than the amount permitted under this section, the tenant may deduct the overpayment of rent.

The undisputed testimony and documentary evidence show that the landlord required and accepted a security deposit of \$1,600.00, double the allowed amount, or \$800.00, as the monthly rent is \$1,600.00.

Therefore, the tenant is allowed to make a one-time deduction of \$800.00 from his next or a future month's rent payment, in order to correct the overpayment of the security deposit. The tenant is to advise the landlord when this deduction is being made and the landlord may not serve the tenant with a 10 Day Notice for Unpaid Rent when this deduction is being made.

If the landlord fails to hire the licensed, professional electrician and/or heating repair person by December 31, 2019, and to make the recommended repairs by January 20, 2020, or to repair or replace the refrigerator by January 15, 2020, or if the landlord fails to supply to the tenant and comply with the report(s) with any deadlines or timeframe suggested by the professional(s), the tenant is at liberty to apply for dispute resolution seeking a monthly reduction in rent for a devaluation of the tenancy or for other financial compensation as may be appropriate until all repairs are complete.

As the tenant is successful with their application, I grant them recovery of their filing fee of \$100.00. I direct the tenant to further reduce their next or a future monthly rent payment by \$100.00 in satisfaction of their monetary award.

The tenant is to advise the landlord when this deduction is being made and the landlord may not serve the tenant with a 10 Day Notice for Unpaid Rent when this deduction is being made.

Conclusion

The tenant's application has been granted and the landlord is ordered to hire a licensed, professional electrician and/or heating repair person, by December 31, 2019, and to have the licensed professional to repair and correct the heating and electrical systems in the tenant's rental unit as per their recommendation by January 20, 2020.

The landlord has been separately ordered to repair or replace the refrigerator in the rental unit by January 15, 2020.

The tenant is allowed to deduct the amount of \$800.00 from his next or a future month's rent in order to correct the overpayment of the security deposit.

The tenant is at liberty to make a further application for dispute resolution seeking a rent reduction or other financial compensation if the landlord does not comply with these orders as directed above.

The tenant is granted recovery of their filing fee of \$100.00.

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: December 18, 2019

Residential Tenancy Branch