



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Enterprises Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for emergency repairs - Section 32; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that the Landlord’s email address as provided in the Tenant’s application is correct.

Issue(s) to be Decided

Is the Tenant entitled to an order for repairs?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started in 2014. Monthly rent of \$2,500.00 is currently payable. A basement flood occurred and was discovered by the Tenant on November 27, 2019. The laundry room is in the basement. The Tenant reported the flood to the Landlord immediately. The Landlord remediated the flood and repaired the original laundry room leak however more leaks appeared in the laundry room and crawlspace. The Landlord had a plumber return however the plumber

refused to make repairs as dead rats were found in the crawlspace. Some rats were subsequently removed however the remaining clean up and repair of the leaks have not been done.

The Landlord states that the original tenancy agreement requires the Tenant to make repairs to the unit. The Landlord agrees to have the crawlspace cleaned of all rats no later than January 17, 2020 and to have the leaks repaired no later than January 21, 2020.

Analysis

Section 32(1) of the Act provides 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.

Section 5 of the Act provides that Landlords and tenants may not avoid or contract out of this Act or the regulations and that Any attempt to avoid or contract out of this Act or the regulations is of no effect. Further section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As it is the Landlord's obligation to maintain and make repairs to a rental unit, I find that the tenancy agreement setting out the Tenant's obligation to make repairs is an attempt to contract out of the Act or inconsistent with the Landlord's obligations under the Act. I find therefore that the requirement of the Tenant to make repairs is of no effect and unenforceable. Nonetheless, as it is undisputed the leaks are continuing and as the Landlord has agreed to make the repairs claimed by the Tenant as set out above, I consider that an order is not necessary given this agreement.

Should the Landlord fail to act as agreed the Tenant has leave to reapply for compensation. As the Tenant's application has been successful, I find that the Tenant

is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Tenant is entitled to the repairs to the unit as agreed by the Landlord.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 10, 2020

Residential Tenancy Branch