



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV Holdings Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), an Order for emergency repairs, and to recover the cost of his \$100.00 Application filing fee.

The Tenant and an agent for the Landlord, C.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was an individual property manager, rather

than the owner or the corporate identity representing the owner in this tenancy. The Agent advised me of the name of the property management company representing the owner; therefore, I amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

The Tenant applied for emergency repairs; however, the matters he raised as issues are not considered "emergency" repairs pursuant to the Act. Further, the hearing was not scheduled in an expedited manner; therefore, I did not dismiss the claim, but heard the Parties' testimony and submissions as an application for regular repairs.

Issue(s) to be Decided

- Is the Tenant entitled to an order for regular repairs, pursuant to section 32 of the Act?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2017, with a current monthly rent of \$1,439.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$675.00, and no pet damage deposit.

In the hearing, the Tenant addressed a number of concerns he has with the repair process at the residential property. He said that his door has been left open by trades people coming in to do repairs. He said he is not always given notice of repair visits ahead of time. He said the various workers have left his suite messy and dirty. He said there is construction work going on to replace windows and doors throughout the residential property. The Tenant said this has led to excessive noise and dust on a daily basis. He said he left a list of needed repairs at the Agent's office on September 24, 2019, but received no response to this.

The Agent submitted some of the Landlord's correspondence with the Tenant. In one letter from the Agent to the Tenant dated November 26, 2019, the Agent said:

You came to me at the beginning of November 2019 to discuss some issues and concerns with your unit. You also asked for notice to enter. I placed a notice on your door on Friday November 22 stating that the appliance repair man would be here Tuesday. We went to your suite, knocked twice. . .no answer, so I

proceeded to enter. You yelled from the shower and told myself and the tech to leave. The tech will be back Thursday November 28th to fix the outlet on the stove. I have dealt with the bed bugs back in August and you had two treatments. We have now started the second round of treatment November 19th. Each time you never followed the paper that outlines the prep work before we spray (wash and bag your clothes, bedding, etc.). What you did do is place a white powder all over your unit and on half of the hallway on the 10th floor. I asked you to remove and clean it, you did not. I did it. Your neighbours were worried about the powder substance.

You mention that the window replacement crew left your unit dusty after installing the new windows. I couldn't tell because of all the white powder you put all over your unit.

As for the sound, all tenants have been and are aware that the entire building is going through window replacement. We are trying to do up-grades to the building for you and the other residents. The building is a concrete building and you will hear some noise while this transformation is being completed. I have your work order. I have been trying to help you.

I have only been the manager at this building since June. I am trying to clean up outstanding issues left from the previous manager.

I feel that you are not helping me help you.

If you have any questions or concerns, please contact myself at [telephone number].

Kind regards,

C.S.

Another letter from the Agent to the Tenant dated December 2, 2019, states the following:

I, as the manager and [J. from the Landlord] would like to work with you to resolve the issues. We were wondering if we could set up a time to discuss this with you. Please let me know if you are willing to talk to us.

Also, Wednesday Dec. 4th the window company will come to install trim around

your windows and patio door. Handyman will fix the areas around the trim so they all look nice.

Thursday, [local pest control company] will be back to do the second spray for the Bed bugs.

If you have any questions or concerns, please contact myself at [telephone number].

Kind regards,

C.S.

At my request, the Tenant summarized the repairs he said are outstanding, as follows.

1. LAMINATE

The Tenant said that the laminate in the living room is peeling and has been this way, since he moved in. He said that "It's popping up more and more and more." He said that on April 1, 2019, he complained about this to the previous building manager, but nothing was done. The Tenant said he raised this again in a letter to the current building manager in late September, but he said he received no response to this letter.

The Agent said that she was on vacation in September and did not receive the letter, and she is not sure what happened to it.

2. BALCONY DOOR

The Tenant said that the sliding door to the balcony was changed, but it is still not fixed. It does not close properly. He said: "In the past few days it has been seriously cold; the only way to close the gap is to tape it up to keep the cold from coming in."

3. BLACK MOULD

The Tenant said that there is black mould in the bathroom. He said: "I have washed the mould twice with vinegar. She didn't see that?" He said he made a second request for removing the black mould on November 4, 2019, but that no action has been taken.

The Agent said: "We checked, and we did not find any mould in his bathroom, whatsoever."

4. ELECTRICAL OUTLET

The Tenant said that the electrical outlet on the stove has no power. He said someone came to fix it, but it still did not work after they left. He said on November 22, 2019, he was taking a shower, and the Agent and an electrician attended the rental unit to do the repair, but he had been given no notice of this appointment. "I could not tolerate that. She said she taped it to the door." He said someone attended to fix the outlet on November 28, 2019, but that it still does not work.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Landlords' and tenants' rights and obligations for repairs are set out in sections 32 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (1) 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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on all the evidence before me, overall, I find that the Landlord has responded to the Tenant's request for repairs in a reasonable manner, as there is undisputed evidence before me that the Landlord has made repeated efforts to address issues such as bed bugs in the residential property, despite what I find is the Tenant's failure to follow preparation instructions. Further, I find that the Landlord attended the rental unit with an appliance technician to repair the electrical outlet on the stove, and to address the Tenant's concern about mould in the bathroom.

In addition, the Agent said that the Tenant requires three days' notice of dates on which the Landlord plans to attend the rental unit for repairs. I find that the Agent tries to comply with the Tenant's request in this regard, despite this not being required of a Landlord under the Act. Section 29 of the Act states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

...

[emphasis added]

Policy Guideline #1 ("PG #1"), "Landlord & Tenant – Responsibility for Residential Premises":

...is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain 'reasonable health,

cleanliness and sanitary standards' throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

[emphasis added]

The Agent said that she asked the Tenant to clean up the white powder that the Tenant said was a bed bug treatment that he purchased and spread around the rental unit and in the common area. The Tenant did not clean up the “white powder”, despite the Agent telling him that it concerned other tenants and asking him to do it. Rather, I find the Agent had to clean up the substance that the Tenant spread in the common area, herself.

I also find that the Tenant has not cooperated as fully as he could in the circumstances. In contrast, I find the Agent accommodated the Tenant in ways such as not adhering strictly to the section 29 requirement to give only 24 hours' notice of the maintenance appointments.

1. LAMINATE

There is insufficient evidence before me that the Landlord has arranged to repair the peeling laminate in the rental unit. I, therefore, Order that within 14 days of the date of this Decision that the Landlord shall retain the services of a flooring expert to visit the rental unit and arrange to repair the laminate flooring for the Tenant.

2. BALCONY DOOR

The evidence before me is that the windows and doors in the residential property are in the process of being replaced by the Landlord. I find it more likely than not that the proper finishing of the balcony door has not been completed. I, therefore, Order that within 14 days of the date of this Decision that the Landlord shall arrange for a maintenance worker to attend the rental unit to repair the gap in the balcony door that is allowing cold air into the rental unit.

3. BLACK MOULD

The Agent's undisputed evidence is that she arranged for an inspection of rental unit bathroom to check for mould, but was not able to find any. I find that the Tenant has submitted insufficient evidence that it is a problem, such as photographs of the mould.

As noted above, a tenant is required by section 32 to "maintain reasonable health, cleanliness and sanitary standards throughout the rental unit". According to PG #1, this includes "...cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould." Similarly, I find that it is a tenant's responsibility to maintain sanitary standards of cleaning the bathroom well enough to remove mould, unless there is an apparent leak or other outside source of the problem beyond basic bathroom use.

I find that the Tenant has not provided sufficient evidence to prove on a balance of probabilities that there is an issue with black mould in the rental unit beyond what is a tenant's responsibility to clean. I, therefore, dismiss this claim without leave to reapply.

4. ELECTRICAL OUTLET

I appreciate that the Landlord has attempted to repair this item at least once, already; however, I find it is more likely than not that the appliance technician did not find the actual cause of the problem. I, therefore, Order that within 14 days of the date of this Decision that the Landlord shall arrange for a different appliance technician or electrician to attend the rental unit to repair the outlet on the appliance. The Agent is encouraged to test the outlet herself in the presence of the Tenant, once the matter has been resolved by a technician, to confirm its functionality.

As the Tenant is predominantly successful in his Application, I award him recovery of the \$100.00 Application filing fee. The Tenant is authorized to deduct \$100.00 from his next rent payment in satisfaction of this award.

Should the Parties disagree as to whether the Landlord has complied with any of the Orders set out in this Decision, they are at liberty to apply for further direction or Orders from the RTB.

The Tenant is at liberty to reapply for rent reductions or monetary compensation, should the Landlord fail to comply with the above Orders.

Conclusion

The Tenant's request for Orders that the Landlord make repairs is granted in part, as set out above. The Tenant is also awarded recovery of the \$100.00 Application filing fee. The Tenant is authorized to deduct \$100.00 from the next rent payment in satisfaction of this award.

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: January 23, 2020

Residential Tenancy Branch