



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes ERP

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The parties confirmed service of the respective evidence submissions on file.

Issue(s)

Should the landlord be ordered to make repairs requested by the tenant?

Background and Evidence

The tenancy for this one-bedroom apartment unit began on August 1, 2019. The current monthly rent is \$1000.00 payable on the 1st of each month. The rental unit is in a new building comprised of 108 units which was constructed less than one year ago.

The tenant is requesting the landlord perform air quality control testing due to a sewage smell in her unit. The tenant testified that since October 2019 when the landlord demolished a neighboring building on the property there has been an intermittent smell of sewage. The tenant submits the smell became more prominent in November particularly in the evenings to the point it was difficult to be in the apartment. The tenant submits in December the smell became very prominent when the landlord began construction on the neighboring building. The tenant kept referring to video cameras and security logs being available to confirm her complaints.

The Resident Manager J.K. testified on behalf the landlord and provided the following timeline:

December 27, 2019 – The Site Superintendent (The “SS”) inspected the tenant’s unit and did not notice any odor. The SS also inspected the parkade at the tenant’s request as she complained of possible carbon monoxide smell. The SS explained to the tenant how the carbon monoxide detectors work.

December 29, 2019 – The SS again checked the unit and found no odor.

December 30, 2019 – The Assistant Building Manager inspected the unit and did not find any unusual smell. The units directly above and below the tenant’s unit were asked if they had any issue with an odd smell and they both reported that they did not.

January 2, 2020 - The SS again inspected the unit after speaking to plumbing contractors who advised to check the grade of the plumbing. The SS again did not notice any smell or issue with the plumbing.

January 5, 2020 – Security patrolled the tenant’s unit and building and reported no odor.

January 12, 2020 – The tenant called paramedics due to breathing difficulties. Security guard attended with the paramedics but neither the security guard or the paramedics noticed any odor.

J.K. testified that the SS has been involved with the building since the beginning of the construction and has overseen all the contractors through the construction. The SS is also responsible for phase 2 which is the demolition and construction of the neighboring building.

Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

The onus is on the applicant to show, on a balance of probabilities, that repairs are required to comply with the health, safety and housing standards required at law.

I find the tenant has provided insufficient evidence that the repairs requested by the tenant are necessary to bring the rental unit into compliance with the law or that it is unsuitable for occupation without these repairs. I find that most of the tenant's evidence is subjective complaints about an offensive odor in her unit without sufficient evidence to back up these complaints. The tenant kept referring to video camera and security logs confirming her complaints but did not produce any such evidence or explain how this evidence to confirm a smell in the unit. Further, I find the landlord has taken reasonable steps to investigate the tenant's complaints and has not found any issue with respect to an unusual odor.

I find the tenant has failed to demonstrate that the landlord has failed to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. I make no orders against the landlord.

The tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's 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: January 23, 2020

Residential Tenancy Branch