



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ERP, FFT

Introduction

On January 6, 2020, the Tenant applied for a Dispute Resolution proceeding seeking an emergency repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 6, 2020, this matter was set down for a Dispute Resolution Hearing on January 23, 2020 at 1:30 PM.

The Tenant and Landlord P.K. both attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlords with a Notice of Hearing and evidence package by registered mail on January 6, 2020 and P.K. confirmed that they received this package. Based on the undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served this package.

The Tenant advised that she submitted additional evidence to the Residential Tenancy Branch, but she did not serve this evidence to the Landlords. As this evidence was not served to the Landlords, I have excluded this additional evidence and will not consider it when rendering this decision. The Tenant was allowed to provide testimony with respect to this additional evidence.

P.K. advised that they served their evidence to the Tenant on January 16, 2020 by registered mail and the Tenant advised that she did not receive this package. As this evidence was served by registered mail and would have been deemed received 5 days after being mailed, this evidence was not served in accordance with the timeframe requirements of Rule 10.5 of the Rules of Procedure. As such, I have excluded the Landlords’ evidence and will not consider it when rendering this decision. P.K. was allowed to provide testimony with respect to this evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair Order?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2017 and the rent was established at \$700.00 per month, due on the first day of each month. The Tenant advised that a security deposit of \$400.00 was paid; however, P.K. was not sure as he was not involved in the creation of the tenancy.

A copy of a “Commercial Lease Agreement” was submitted as documentary evidence; however, it was not signed. The Tenant advised that she “believes” she signed this commercial lease and made references to terms in this agreement that the Landlords were not complying with, but she contrarily “believes” that the *Act* has jurisdiction over this tenancy.

P.K. did not have any information with respect to this agreement as Landlord J.K. was the one responsible for initiating the tenancy with the Tenant. Other than his belief that the rental unit was zoned as a commercial unit and that it was his understanding that this was rented as a commercial tenancy, he had no knowledge of the details of this tenancy. P.K. was not prepared for this hearing and had limited information with respect to it, deferring to J.K. as the one being responsible. He did acknowledge that the rental unit was a studio apartment with a kitchen and a bathroom.

Neither party could confirm if this commercial lease had been signed and if this was a commercial tenancy. Alternately, neither party could confirm if a Residential Tenancy Agreement had been signed or if the intention of renting this unit was as a residential tenancy that started as an unwritten month to month tenancy between the Tenant and J.K. based on an oral agreement.

With respect to her claims, the Tenant advised that the Landlords cut off her hydro on December 16, 2019. Thus, the reason for the Application. However, she stated that she still has

hydro until the account has been sorted out. P.K. acknowledged to cancelling the hydro account in their name.

Based on the scant evidence, the testimony of the Tenant, and the limited knowledge of P.K., it is not clear if this is a residential tenancy as covered under the *Act*. Furthermore, even if this issue were covered under the jurisdiction of the *Act*, the Tenant's hydro is still available and functioning in the rental unit. As a result, this would not be considered an emergency repair.

It appeared as if the Tenant's main issue was her belief that the Landlords were responsible for the hydro as per the agreement, and they had cut it off illegally. She was advised that if it was her belief that this was a residential tenancy issue covered under the *Act*, she would have to make a new Application seeking that the Landlords comply with the terms of the tenancy agreement, and then provide documentation demonstrating that this was a residential tenancy. It would also be up to the Landlords to prove that this was not an issue covered under the purview of the *Act*. Ultimately, I dismiss this Application with leave to reapply.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the filing fee in the amount of \$100.00.

Conclusion

As the issue of jurisdiction is not clear, I dismiss this Application with 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 24, 2020

Residential Tenancy Branch