



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ERP

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 14, 2020 (the "Application"). The Tenants have applied for an order for emergency repairs, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenants, and the Landlord's Agent attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord joined the hearing at 9:50 A.M..

The Tenants testified that they did not have the Landlord's address from service therefore they served the Application to the Landlord by email on January 20, 2020. The Landlord's Agent confirmed receipt of the Tenants' Application. Pursuant to section 71 of the *Act*, I find the Tenants' Application was sufficiently served for the purposes of the *Act*. The Landlord's Agent stated that they did not receive any documentary evidence from the Tenants. The Landlord's Agent stated that the Landlord did not serve his documentary evidence to the Tenants. Both parties wished to continue with the hearing regardless.

Preliminary and Procedural Matters

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the both the Tenants and the Landlord did not serve the other party with a copy of their documentary evidence; therefore, I will only consider oral testimony from each party during the hearing.

Issue(s) to be Decided

1. Is the Tenant entitled to an order for the Landlord to make emergency repairs to the rental unit, pursuant to Section 62 of the *Act*?

Background and Evidence

The Landlord's Agent stated that the tenancy began on December 15, 2019, while the Tenants stated that they were unable to move in until December 26, 2019. The parties agreed that the Tenants are required to pay rent in the amount of \$1,800.00 to the Landlord which is due on the first day of each month. The Tenants stated that they paid a security deposit in the amount of \$900.00 at the start of the tenancy. The Landlord's Agent stated that no deposit was ever paid to the Landlord.

The Tenants have applied for emergency repairs to the rental unit in relation to several areas of concern. The Tenants stated that several lights throughout the rental unit do not work. The furnace in the rental unit has exposed wires which the Tenants stated is a safety concern. The Tenants testified that the electrical system in the rental unit is inadequate as the breakers trip frequently when the Tenant try to plug things into the electrical outlets. The Tenants stated that they noticed exposed tiles under the laminate flooring in the kitchen which they feel may contain asbestos. The Tenants stated that there are single pane windows throughout the rental unit which is causing an increase to their heating costs. The Tenants stated that one of the windows in the rental unit is broken. The Tenants stated that there had been a rodent problem in the rental unit and that they are concerned that there may be rodent feces and urine in the ventilation system. The Tenants stated that these issues have persisted throughout the duration of their tenancy.

The Landlord responded by stating that the parties have had previous agreements in which the Tenants have had issues repaired in the past and that the Landlord reimburses them to cover any costs incurred with the repairs. The Landlord stated that he was unaware of the current issues that the Tenants have raised in their Application. The Landlord stated that he is agreeable to attending the rental unit to inspect the issues that the Tenants are concerned about.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 32 of the *Act*;

(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...

(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...

Section 33 of the *Act* states; "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, ...

In this case, I find that the Tenants have provided insufficient evidence to demonstrate that the issues listed in their Application merit an order for emergency repairs. As such, I dismiss the Tenant's claim with leave to reapply.

During the hearing, the Landlord was agreeable to attending the rental unit to inspect the issues that have been raised by the Tenants. It is advised that the Landlord take the necessary step required to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Should the Landlord not take the necessary steps to 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, then the Tenants are at liberty to reapply for an order for regular repairs.

Conclusion

The Tenants have provided insufficient evidence to demonstrate that the issues listed in their Application merit an order for emergency repairs. As such, I dismiss the Tenant's claim with leave to reapply for regular repairs should the Landlord not take the necessary step required to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

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: February 04, 2020

Residential Tenancy Branch