



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFL

Introduction

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

- an Order for emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both parties had a support person attend the hearing.

Both parties agree that the tenant served the landlord with her application for dispute resolution via express post. The tenant testified that her application was put in the post on May 12, 2020 and the landlord testified that she received it about three days later. I find that while express post is not a recognized method of service under section 89 of the *Act*, the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act* with the tenant's application for dispute resolution.

Issues to be Decided

1. Is the tenant entitled to an Order for emergency repairs, pursuant to section 33 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2003 and is currently ongoing. Monthly rent in the amount of \$400.00 is payable on the first day of each month. A security deposit of \$200.00 was paid by the tenant to the landlord. A written tenancy agreement was not entered into evidence.

The tenant testified that she has been without functioning running water since March 25, 2020 and is seeking the landlord to repair the water lines.

Both parties agree on the following facts. The parties became aware of a water issue on March 23rd or 24th, 2020. The landlord wrote the tenant a letter dated March 24, 2020 which stated that the problem must get fixed and that she would like to hire a plumber and a house inspector. The tenant informed the landlord that she already called a plumber and would prefer to deal with the trades people herself.

The tenant testified that "Plumber A" attended at the subject rental property but could not fix the problem. The tenant testified that she then hired "Plumber B" who informed her that the hot water tank was rusted out and needed to be replaced. The tenant testified that she wanted to arrange the new hot water tank, not the landlord. The tenant testified that she tried to order a new hot water tank online but was unable. The tenant attended in store on March 29, 2020 and purchased a new hot water tank which was installed on April 13, 2020 by "Plumber B". The tenant testified that the hot water tank took a long time to get shipped in from out of Province.

The tenant did not enter into evidence receipts or invoices for the hot water tank, Plumber A or Plumber B. In the tenant's evidence, the tenant included a letter from her support person claiming to be a handy person hired to repair the subject rental property. The tenant did not mention her support person in her oral submissions. The letter from her support person states that the subject rental property was not properly maintained by the landlord and this led to the water leaking issues. The tenant did not speak to this letter or provide any testimony stating that her support person was also her handyman. The name of Plumbers A and B provided in the hearing, were different that the name of

her support person. At the beginning of the hearing the tenant's support person was affirmed but did not provide any testimony during the hearing.

The landlord testified that she saw "Plumber A" attended at the subject rental property and a short time later she watched him walk over to her property. Plumber A asked the landlord to turn on the water valve for the rental property, which is located in the landlord's property. A few moments later the Plumber A ran back to the landlord and told her to turn off the water because it was "coming out all over". Plumber A then asked the landlord if she had ever gone inside the subject rental property. The landlord testified that the tenant told her that she was shy and so she did not want to push her presence on the tenant, and had not been in the subject rental property for many years. The landlord testified that Plumber A then showed her digital photographs of the subject rental property on his iphone. The photos showed severe hoarding and associated filth. Plumber A told the landlord that he would not work at the subject rental property because of the level of filth.

The landlord entered into evidence an e-mail from Plumber A which states:

We attended at [the subject rental property] in April to install a new hot water tank and we were not able to due to the large amount of debris and garbage in the home.

A few days later she had told us it was all cleaned up and we could return to install the hot water tank. It was not clean. We were able to install the tank but not able to turn the power on because there was no access to the breaker panel.

When we turned on the water, a whole bunch of leaks came to our attention. Water was coming out inside and under the home in many places. This was caused by rats chewing thru the pipes. Unfortunately due to the state of the home we are unable to access the pipes to fix and replace them properly.

We recommend all the water lines in the home be replaces due to the large amount of leaks. We would need the home cleaned before we can enter due to safety reasons.

The landlord testified that after speaking with Plumber A and seeing the pictures she became very concerned with the condition of the subject rental property and posted a notice of inspection on the tenant's door on April 22, 2020 for an inspection dated April 24, 2020. The tenant confirmed receipt of the notice of inspection on April 23, 2020.

Both parties agree that the landlord and her son attended at the subject rental property on April 24, 2020 for the inspection. The landlord testified that the subject rental property was piled from floor to ceiling with garbage and debris and fecal matter from cats, dogs and rodents was everywhere. The landlord testified that the smell was overwhelming and disgusting. The landlord entered into evidence photographs evidencing her above testimony. The landlord testified that the tenant refused the landlord access to one of the rooms in the subject rental property.

The tenant testified that she needs to clean the subject rental property and that it is "atrocious". The tenant did not dispute that she refused the landlord access to one of the rooms.

The tenant testified that she has noticed mice at the subject rental property for some time but not rats. Both parties agree that the tenant never notified the landlord of the rodent problem prior to the current water issues coming to light. The tenant testified that she is aware that she needs to clean the subject rental property.

The landlord testified that she should not have to make the repairs to the subject rental property because the tenant's filthy living and hoarding caused the rat infestation which caused the damage to the water lines. The landlord testified that her building, approximately 80 feet from the tenant's building does not have a rat problem, because she keeps it in a sanitary condition.

Both parties agree that the tenant received written notice of another inspection on May 18, 2020 effective May 19, 2020 and that the tenant refused to grant the landlord entry. The landlord testified that she wanted a plumber and a home inspector to attend to assess the damage.

Analysis

Section 33(1)(ii) of the Act defines emergency repairs as those that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and includes damaged or blocked water or sewer pipes or plumbing fixtures.

Section 32(2) of the Act states that 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.

Section 32(3) of the *Act* states that 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.

Section 32(4) of the *Act* states that a tenant is not required to make repairs for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 states that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Based on the testimony and evidence of both parties I find, on a balance of probabilities, the tenant has breached section 32(2) of the *Act*. I find that through neglect or intent, the tenant has allowed the subject rental property to become unsanitary and that the unsanitary nature of the subject rental property has attracted rodents. Based on Plumber A's email, I find that the rodents have caused the damage to the water pipes. I find the handyman letter signed by the tenant's support person to have no weight and to be self serving. The letter is not from an impartial repair person, but clearly a friend of the tenant. I prefer the evidence from Plumber A over the support person's letter.

I find that the damage to the water pipes caused by the rats is not normal wear and tear and was caused by the tenant's neglect. I find that the tenant had an obligation to inform the landlord of the rodent issue as soon as it was known to the tenant. I find, on a balance of probabilities, that the tenant purposefully hid the extent of the rodent problem from the landlord to prevent the landlord from learning of the state of the interior of the subject rental property. While the landlord is normally responsible for dealing with pests such as rodents, I find that in this case, both the presence of the pests and the extent of the problem were caused by the tenant and are therefore the tenant's responsibility to correct, pursuant to section 32 of the *Act*.

Based on my above findings, I dismiss the tenant's application for dispute resolution without leave to reapply.

As the tenant was not successful in her application for dispute resolution, I find that she is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

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: May 29, 2020

Residential Tenancy Branch