



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 tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons.

The tenants attended the hearing; however, the landlord did not attend.

The tenants stated they served the landlord with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on July 29, 2020. The tenants provided the Canada Post Tracking Number to confirm this mailing. That number is listed on the style of cause page in this Decision.

I accept the tenants' evidence that the landlord was served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the landlord's absence.

The tenants were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and or arguments are reproduced here; further, only the evidence specifically referenced and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters -

In reviewing the written tenancy agreement submitted by the tenants, I note that the listed landlord is shown as a company name, not the individual named as landlord in the tenants' application.

In response to my inquiry, the tenants said that the individual named, BM, is the owner of the company named in the written tenancy agreement.

I therefore find it appropriate to add the name of the landlord listed in the application for dispute resolution as a respondent.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons?

Background and Evidence

The tenants submitted a written tenancy agreement showing a tenancy start date of October 1, 2016, a fixed term through November 1, 2016, monthly rent of \$800, due on the 1st day of the month, and a security deposit of \$400 being paid by the tenants to the landlord. The written tenancy agreement shows the tenancy would end at the end of the one month, fixed term.

The written tenancy agreement was in the name of another individual as tenant, and they explained that this person was the female tenant's sister's name. The tenants said the sister was never a tenant, but that it was easier for her to sign the tenancy agreement. The tenants submitted that they have always been the tenants and the tenancy continues.

Included in the monthly rent was electricity.

The rental unit is in a three-unit building, with two other units currently rented.

In support of their application, the tenants submitted that they have been without electrical power since July 22, 2020, when the landlord had the smart meter turned off to the residential property, affecting all three rental units. The landlord did so because he had a dispute with the tenant in unit A, according to the tenants.

The tenants said that the tenants in the other two units are using generators, but they cannot afford one. The tenants submitted that they had been paying their neighbor to run a power cord from their home; however, the extra use caused their breaker to trip, and they currently have no power source.

The tenants said that they have now been served a One Month Notice to End Tenancy for Cause (Notice) by the landlord, and they have filed an application for dispute resolution to contest the Notice.

The tenant from unit A attended the hearing briefly at the beginning, confirming he could call in to be a witness. The other tenant said they had also filed an application for dispute resolution due to the landlord turning off the electrical power, and had their hearing the week prior.

The other tenant provided the file number for their application, which is listed on the style of cause page of this Decision. I have reviewed that Decision of another arbitrator made on August 17, 2020. The other arbitrator found that electricity is an essential service and ordered the landlord to immediately reinstate the terminated essential service, electricity. The other tenant said that to date, the electricity has not been restored.

I note the landlord, who had a different listed company name, was not present for the hearing on August 17, 2020.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

As the landlord failed to attend the hearing, I consider the tenants' application to be unopposed and undisputed.

Section 33 of the *Act* requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made for the purpose of repairing the following: major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit or the electrical system.

In this case, the issue in question is the lack of electricity, caused by the landlord having the power disconnected or turned off, not a lack of repair to the electrical system.

Therefore, I do not find that this dispute falls under section 33 of the Act.

Section 27(1) of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

I find this section of the Act applies to the tenants' situation as I find electricity is both an essential service necessary for the tenants' use of the rental unit and providing the electricity is a material term of the tenancy agreement.

Pursuant to section 62 (3) of the Act, I therefore order the landlord to immediately restore electrical service to the rental unit.

The tenants did not request nor suggest they were interested in monetary compensation due to a lack of essential service; however, the tenants are at liberty to make another application for dispute resolution seeking monetary compensation for the loss of use of an essential service.

The tenants are reminded that they are still required to pay their monthly rent in full and on time, as required by the written tenancy agreement, as they have not been provided authority for a reduction in monthly rent or to withhold monthly rent.

Conclusion

I order the landlord to immediately restore electrical service to the rental unit.

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: August 28, 2020

Residential Tenancy Branch