



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

On August 10, 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*.

The Tenant attended the hearing, with T.F. attending as her advocate. The Landlord did not attend the 48-minute hearing. All parties provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing and evidence package by posting it to the Landlord’s door on August 12, 2020. She provided a signed proof of service form corroborating this service. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package. However, as the Tenant did not check to see if the Landlord could view her video evidence pursuant to Rule 3.10.5 of the Rules of Procedure, only the Tenant’s documentary evidence will be accepted and considered when rendering this Decision.

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.

The Tenant advised that the tenancy started on October 1, 2019, that rent is established at \$850.00 per month, and that it is due on the first day of each month. A security deposit of \$250.00 was also paid. A copy of the signed tenancy agreement was entered into evidence.

She stated that immediately after moving into the rental unit, there was a foul odour of a dead animal emanating from the venting system; however, as the Landlord had left the country for four months, nothing was done about the issue. She stated that this odour stopped after approximately four months and there have been no similar issues since.

In addition to this issue, she stated that since the start of the tenancy, light particulate matter has been coming from the venting system, leaving dust on all surfaces. At the beginning of the tenancy, she believed this to be drywall dust; however, since June 2020, this particulate matter has increased in size, density, and composition. She would routinely sweep every day and this matter would fill a dustpan every three days. When she sweeps now, this white or cream coloured matter, that is bigger than dust particles, will stick to her broom and she must now wash her broom as well. This matter has seemed to form a sticky film on all surfaces. As she has had to shelter at home due to the pandemic, the constant exposure to this matter is of particular concern to her health and safety as she suffers from asthma and has been sneezing more lately.

She stated that she attempted to bring this up to her Landlord's attention at the beginning of the tenancy, but as he was away for four months, he gave her the phone number of someone to call while he was absent. She advised this person of the dust issue, but no remedy was provided. She inspected the furnace room and found it to be extremely dusty. As well, she has taken it upon herself to change the furnace filter every month.

She advised that she wrote two letters to the Landlord, dated April 14, 2020 and May 19, 2020, requesting that the Landlord address these concerns; however, the Landlord told her "goodbye" and to "get a lawyer". These letters were submitted as documentary evidence.

T.F. advised that they were hoping that the Landlord would attend this hearing to answer to these serious issues as opposed to “burying his head in the sand”.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 33 of the *Act* outlines the Landlord’s and Tenant’s duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

Emergency repairs

- 33** (1) In this section, "**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, or
 - (vi) in prescribed circumstances, a rental unit or residential property.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;**
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;**
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.**

- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
 - (a) claims reimbursement for those amounts from the landlord, and
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
- (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find it important to note that the burden of proof lies on the party making the Application to substantiate the claims being made. When reviewing the testimony of the parties, the consistent evidence is that the Landlord was notified of the Tenant's concerns about the particulate matter issue in writing twice.

When reviewing the totality of the evidence presented by the Tenant, I acknowledge from the Tenant's undisputed testimony that there appears to be some particulate matter emanating from the venting system that she believes is out of the ordinary and hazardous to her health. However, apart from her testimony and the letters to the Landlord, she has provided little evidence corroborating her claims. Furthermore, she has submitted no professional report of what this alleged particulate matter is, nor has she provided any medical documentation establishing that exposure to this suspected particulate matter is detrimental to her health.

Based on the limited evidence provided by the Tenant, I am not satisfied that if there is this particulate matter coming from the venting system, that it falls into the category of being urgent or necessary for the health or safety of anyone in the rental unit as defined under the emergency repair Section of the *Act*. Other than her simply stating that this may be present in the rental unit, I do not find that the Tenant has submitted sufficient or compelling evidence that there is this particulate matter present, nor has she submitted any documentation that if this is present, how it is unsafe or a hazard pursuant to the emergency repair Section of the *Act*.

However, I caution the Landlord that Section 32 of the *Act* requires that he must provide and maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and it must be suitable for occupation by the Tenant. Should the Tenant believe that there are necessary repair issues that the Landlord is responsible for fixing, the Tenant may apply for a repair

Order and for monetary compensation if the Landlord has failed to investigate an issue and make any necessary repairs after a written request to do so.

As the Tenant was not successful in her claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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: September 15, 2020

Residential Tenancy Branch