



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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make repairs or emergency repairs to the rental unit pursuant to section 33.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:41 pm. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn testimony that the landlord was served with the tenant's application for dispute resolution and evidence package by way of registered mail on October 1, 2020. The tenant provided the tracking information in his evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find the landlord deemed served with the tenant's application and evidentiary materials on October 6, 2020, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

Issues to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Background and Evidence

This month-to-month tenancy began on November 15, 2017, with monthly rent current set at \$850.00, payable on the first of every month. The landlord collected a security deposit of \$425.00, which the landlord still holds.

The tenant filed this application after the landlord failed to address ongoing issues with the tenant's rental unit. The tenant testified that he has a leak in his rental unit in the living room ceiling, and which has now spread to other areas such as the kitchen. The tenant testified that this issue has been going on or over a year, and although the landlord had attended on one occasion in an attempt to repair the leak, the matter remains unresolved. The tenant testified that he has also experiencing issues with a leaking toilet, and cockroaches.

The tenant testified that he has been attempting to contact the landlord by way of phone and written request, with no response. The tenant provided a copy of a letter wrote to the landlord on or about July 10, 2020 requesting that the landlord resolve the issues, and gave the landlord a timeline of 2 months. The tenant confirmed that the landlord has not responded.

Analysis

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

32 (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.

(2) 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.

- (3) 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.
- (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 the following in regards to emergency repairs:

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...
 - (v) the electrical systems....

(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.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(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.

Under Section 33 (1)(c) of the *Act*, a leak or issue with a plumbing fixture may be considered an emergency repair.

I accept the sworn testimony of the tenant that despite his repeated attempts to contact the landlord, and have the issues addressed, the tenant has not received a response or a resolution. As stated above, the landlord has an obligation to perform repairs under the *Act* and tenancy agreement. I order the landlord to comply with sections 32 and 33 of the *Act* as set out above. I order that the landlord perform these repairs within 2 weeks of receipt of this order. In the event that there is a reasonable explanation for why the repairs cannot be performed within this time period, I order that the landlord provide written confirmation to the tenant of when the repairs will be completed.

Conclusion

I order the landlord to comply with sections 32 and 33 of the *Act*. I order that the landlord perform these repairs within 2 weeks of receipt of this order. In the event that there is a reasonable explanation for why the repairs cannot be performed within this

time period, I order that the landlord provide written confirmation to the tenant of when the repairs will be completed.

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: October 22, 2020

Residential Tenancy Branch