



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FF

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; and
- recovery of the filing fee.

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

The tenants stated they served the landlords with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on September 18, 2020. The tenants provided the Canada Post Tracking Numbers to confirm this mailing. Those numbers are listed on the style of cause page in this Decision.

I accept the tenants' evidence that the landlords were served notice of this hearing in a manner complying with section 89(1) 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 are reproduced here; further, only the evidence specifically 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 limited liability company name, not the individuals named as landlords in the tenants' application.

In response to my inquiry, the tenants said they understood they could not name a company in their application, rather they had to name and serve the registered owners of the company.

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 and recovery of the filing fee?

Background and Evidence

The tenants submitted a written tenancy agreement showing a tenancy start date of August 15, 2016, a fixed term through August 31, 2017, monthly rent of \$1,600, due on the 1st day of the month, and a security deposit of \$1,600 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The tenant said that the landlord has refunded a half of the original security deposit.

In support of their application, the tenants submitted that two skylights in the rental unit are leaking, making the surrounding drywall swell. When it rains, water drips down the walls.

The tenants submitted that they had a roofing contractor investigate the issue and he informed the tenants that the skylights were not the proper size, causing the leaks, particularly after it rains.

The tenants submitted that the leaking has caused black and white mold in and around the skylights, which is now impacting their health.

The tenants submitted they have addressed this matter with the landlords' property manager, who in turn, has informed the landlords of the matter.

To date, despite the repeated requests, including a written request, sent to the landlord, the skylights have not been repaired.

The tenant said that their request is that the skylights be replaced, as they will never fit due to the improper size.

The tenant's additional relevant evidence included a detailed report from the roofing contractor, exterior photos of the skylights taken by the roofing contractor, written requests to the landlord and property manager, a timeline and emails requesting a skylight replacement.

Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

As the landlords failed to attend the hearing, I consider the tenants' application unopposed.

Section 32 of the *Act* requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

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. [*My emphasis*]

In the circumstances before me, I do not find that the issue of leaks coming from the skylights to be an emergency repair as defined in the Act, but I do find that it is a necessary repair under the Act for health and safety reasons.

Where a tenant requests such repairs, a landlord must be afforded a reasonable amount of time to take sufficient action.

In this case, I find the tenants submitted sufficient evidence that they have made repeated written requests to the landlords through their property manager and no measures have been taken to make those repairs.

I also find that the tenants provided sufficient evidence that the repairs and remediation must be made in order to preserve the property and prevent further mold from developing, for health and safety reasons.

Pursuant to section 62(3) of the Act, I therefore order the landlords to immediately hire a licensed, professional roofer, to make the repairs necessary **in a good and workmanlike manner and which meets health and safety standards** to address the matter of the leaks in the two skylights as recommended by the licensed, professional roofer, **no later than November 15, 2020.**

I further order the landlord to obtain a written report from the roofer when the process has been completed and provide that written copy to the tenants.

Once the repairs are made, I further order the landlords to **immediately remediate the mould throughout the rental unit, immediately repair any damaged drywall in the affected area, all with proof to the tenants that the remediation complies with health and safety standards, by November 30, 2020;**

If the landlords fail to comply with the orders, the tenants are at liberty to file another application for dispute resolution and seek an order reducing their monthly rent until such repairs, replacement or remediation, in their entirety, have been completed.

As the tenants are successful with their application, I grant them recovery of their filing fee of \$100. I direct the tenants to deduct \$100 from their next, or a future monthly rent payment, in satisfaction of this monetary award.

The tenants are instructed to inform the landlords when the deduction has been made, so that the landlord will not serve them a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for deficient rent.

Conclusion

The tenants' application has been granted, the landlords are ordered to make the repairs as noted above, and the tenants are granted recovery of their filing fee.

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 29, 2020

Residential Tenancy Branch