



Dispute Resolution Services Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City to City Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out emergency repairs pursuant to section 33.

The tenant attended. The tenant was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant testified that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the address provided by the landlord on October 19, 2020 thereby effecting service 5 days later pursuant to section 90, that is, on October 24, 2020. The tenant provided the tracking number in support of service and submitted copies of the receipts. The tenant submitted a signed and witnessed Proof of Service document in the RTB form. The landlord filed documentary evidence prior to the hearing.

Further to the uncontradicted testimony of the landlord and the supporting documentary evidence, I find the tenant served the landlord pursuant to the Act.

-
Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The monthly tenancy began on August 1, 2020 for rent of \$2,300.00 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,150.00 to the landlord which the landlord holds.

The tenant stated that at the time the parties agreed to the tenancy, the landlord verbally undertook to conduct repairs on the unit before or shortly after she moved in. The repairs have not been done. The tenant did not submit a copy of the agreement.

The tenant stated that the unit has not had a properly functioning front or back door for the duration of the tenancy, and an electrical outlet in the living room has drywall compound partially covering it which the tenant believes is unsightly and unsafe; as well, black mold has accumulated in the unit, particularly in the master bath and bedroom.

The tenant stated that they frequently asked the landlord to fix these issues and the landlord failed to do so. Copies of texts were submitted in support of the tenant's testimony that written notice had been provided to the landlord. The tenant submitted photographs of each item for which repairs were requested including several of a black substance in the two rooms.

The tenant testified that the landlord provided the tenant with a copy of a report from a restoration company concerning the black substance in the unit dated October 22, 2020. The tenant did not submit a copy of the report but discussed its findings during the hearing. The tenant testified that the report acknowledged the existence of "some sort of mould" around the main toilet and recommended "more test to determine the moisture content of the master's bathroom, toilet floor and walls to determine whether to replace/remove or just clean the black spots; the bathroom vanity should be removed."

The tenant stated that she has a respiratory illness and cannot enter the areas of the unit with the black substance for fear of harming her health. The tenant requested the following emergency repairs be conducted by the landlord:

1. The landlord retain a qualified person to examine and test the alleged mold in the unit, determine whether toxic mold is present, determine an appropriate repair and remediation, and carry out the repair/remediation in a timely manner, and provide a letter to the tenant outlining the test findings and the solution;
2. The landlord repair to front and back doors of the unit to good working order;
3. The landlord repair the electrical outlet partially covered by drywall compound to good working order.

Analysis

This application involves consideration of the duty of a landlord to provide a safe unit free of toxic substances and working elements (doors and electrical outlet).

The relevant sections of the Act are discussed.

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.

Section 32(1) and (2) of the *Act* outline the following obligations of the landlord to repair and maintain a rental property:

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.

-
Section 62(3) of the *Act* states:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply

with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The tenant submitted credible evidence that there is an unknown and unidentified black substance in the bathroom and bedroom of the unit, that the two exit doors do not operate well, and an electrical outlet is non-functioning. I place considerable weight on the tenant's evidence as the landlord, although served, did not attend the hearing.

I find that the tenant has established that elements of section 33 are present in this situation. Further to section 33(3), I find that the tenant has established that a black substance is growing in areas of the unit, that the black substance should be tested to determine its nature and cause, and that repairs/remediation take place as necessary. I find the tenant has met the burden of proof similarly with respect to the two exit doors and the electrical outlet.

Based on the testimony of the tenant and the supporting documentary evidence, I find that the tenant has met the burden of proof on a balance of probabilities for an Order for Emergency Repairs as necessary for her health (the unidentified black substance) and safety (doors and electrical outlet).

I find that emergency repairs are needed. I also accept the tenant's testimony that they have verbally requested these items to be fixed on several occasions and have sent texts to the landlord as well. I accept the testimony that the landlord has had a report commissioned by a restoration company and has not followed up with the recommended testing.

Accordingly, I direct that within one month of the date of this Decision, the landlord shall take the following steps:

1. The landlord shall retain a qualified person to examine and conduct appropriate tests on the black substance in the unit to determine what it is and to propose a plan of repair/remediation;
2. The landlord shall retain a qualified person to plan/carry out any necessary or recommended repairs/remediation;
3. The landlord shall repair the two doors and the electrical outlet to restore them to good working order;
4. The landlord shall provide to the tenant copies of reports, plans and detailed invoices recording work done with respect to all the above forthwith upon

availability along with a letter from the landlord outlining the issues and the solution.

Conclusion

I order that the landlord perform emergency repairs as follows within one month of the date of this Decision:

1. The landlord shall retain a qualified person to examine and conduct appropriate tests on the black substance in the unit to determine what it is and to propose a plan of repair/remediation;
2. The landlord shall retain a qualified person to plan/carry out any necessary or recommended repairs/remediation;
3. The landlord shall repair the two doors and the electrical outlet to restore them to good working order;
4. The landlord shall provide to the tenant copies of reports, plans and detailed invoices recording work done with respect to all the above forthwith upon availability along with a letter from the landlord outlining the issues and the solution.

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: November 17, 2020

Residential Tenancy Branch