



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 a tenant's application for orders for emergency repairs. The tenant appeared at the hearing; however, there was no appearance on part of the landlord.

Since the landlord did not appear, I explored service of hearing documents upon the landlord. The tenant testified that he served the named landlord with his proceeding package, in person, on November 27, 2020. I accepted the landlord was duly served and I continued to hear from the tenant without the landlord present.

As for service of evidence upon the landlord, the tenant stated he did not serve the landlord within his photographic evidence. Accordingly, I informed the tenant that I would not admit his photographic evidence. The tenant chose to continue this hearing based on his oral testimony.

The tenant also stated during the hearing that he was seeking a rent reduction and compensation for loss of use of the rental unit and damage to his personal property. While loss of use of a rental unit and other damages or loss that result from a landlord's violation may be grounds to award a tenant a rent reduction and/or a Monetary Order, the tenant had not made such a claim under this Application for Dispute Resolution. Accordingly, I did not consider that request further and I informed the tenant that he is at liberty to pursue such remedy by filing another Application for Dispute Resolution.

Issue(s) to be Decided

Is it necessary and appropriate to issue orders for the landlord to make emergency repairs?

Background and Evidence

The tenant testified that he has been renting the rental unit, described as a one bedroom ground floor apartment, for approximately 9 years and he is currently paying rent of \$974.00 on the first day of every month.

The tenant described the wall cavity and flooring in the bedroom as becoming wet and mouldy several months ago. The tenant submitted that the building manager was notified of the issue but a significant amount of time passed before action was taken and the issue remains outstanding.

The tenant testified that he gave the landlord a letter dated October 6, 2020 with respect to repair issues and on October 7, 2020 the landlord had a section of the bedroom drywall cut open where it was found to be wet and mouldy behind the drywall. The wet insulation was removed and the carpet was also pulled back which revealed the underside of the carpet was mouldy.

The tenant understands the water is coming in from the exterior of the building through the concrete wall in the patio area. The landlord had a product applied to the cracks in the concrete on the exterior of the rental unit on November 29, 2020 and December 12, 2020. The tenant stated there appeared to be some improvement but then after rainfall the inside of the wall became wet again. The tenant notified the building manager that the wetness reappeared and the building manager responded that he would deal with the issue last week; however, the manager did not contact him or come last week.

The tenant testified that a city inspector also inspected the rental unit and stated the mould was creating an unhealthy living environment. The tenant stated that he understands the city gave the landlord a deadline of March 15, 2021 to complete the repairs, which the tenant accepts as a reasonable deadline to stop the water ingress, replace the drywall and the carpeting.

The tenant described how his bed was damaged by the mould and he has been sleeping in the living room in an effort to stay away from the mould. The tenant acknowledged the landlord proposed moving the tenant to another apartment in the property but one unit he was shown was smaller than his and other unit was still occupied by a tenant and was also in need of renovation.

Analysis

Section 32(1) of the Act obligates a landlord to repair and maintain the rental unit and residential property, as set out below:

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.

I accept the tenant's unopposed testimony that there has been water ingress into the rental unit from the exterior wall or foundation of the building and the water ingress resulted in a wet and mouldy wall cavity and flooring that is unsafe and not suitable for occupation, at least in the bedroom. I also accept that the landlord has been notified of the issue and has undertaken some effort to remedy the problem; however, I further find that the issue has not yet been satisfactorily rectified as water continues to make its way into the rental unit. It follows logic that until the water ingress problem is rectified the wall cavity and flooring in the rental unit will continue to become wet and mouldy.

While the issue described to me does not meet one of the criteria for finding an "emergency repair" under section 33(1)(c) of the Act, given the formation of mould and the tenant's loss of use of a portion of the rental unit, I find it appropriate to issue a repair order to the landlord with this decision under section 62 of the Act, as follows:

I ORDER that LANDLORD to do all of the following no later than March 15, 2021:

1. Rectify the water ingress issue so that water no longer enters the rental unit from the exterior.
2. Dry and treat the affected wall cavity as required by building code laws.
3. Repair the wall in the affected area, including replacement of the insulation, vapour barrier, and drywall in the affected areas.
4. Replace the affected flooring in the bedroom.

Should the landlord fail to fulfill the above orders, the tenant may make another Application for Dispute Resolution seeking further remedy.

I award the tenant recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution. The tenant is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

I have issue repair orders to the landlord by way of this decision.

The tenant is awarded recovery of the \$100.00 filing fee and is authorized to deduct \$100.00 from a subsequent month's rent payment in satisfaction of this award.

The tenant remains at liberty to file another Application for Dispute Resolution if he chooses to pursue a rent reduction and/or monetary compensation from the landlord or is in need of further repair orders.

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: December 29, 2020

Residential Tenancy Branch