



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, RP, MNR, FFT

Introduction

On April 8, 2021, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 6, 2021. The Tenants also applied for the following relief:

- For an order to reduce the rent for repairs, services or facilities agreed upon but not provided.
- For an order for repair of the rental unit.
- For a monetary order for the cost of emergency repairs.

On June 16, 2021 the Tenants amended the claim to include a claim for money owed or compensation for damage or loss.

The matter was set for a conference call hearing. The Tenants and Landlord's agent ("the Landlord") attended the teleconference hearing.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by the Landlord. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties testified that the tenancy ended when the Tenants vacated the rental unit at the end of April 2021.

There is no need to determine whether or not the tenancy is ending based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenants' claim to dispute the 10 Day Notice, and the claim for a rent reduction is dismissed.

The hearing proceeded based on the Tenants' claims to recover the cost of emergency repairs and for a monetary order for money owed or compensation for damage or loss under the Act.

The Landlord stated that she did not have an opportunity to serve documentary evidence to the Tenants prior to the hearing. She testified that the Tenants' address for the service of documents is the dispute address and the Tenants vacated that address one week after they applied for dispute resolution. The Landlord was asked if the Tenants provided her with an updated address and she confirmed that they provided her with a forwarding address via email on April 30, 2021, that she received on May 3, 2021.

The Tenants were asked whether they consent to an adjournment and they were not in agreement.

I note that the Landlord did not provide any documentary evidence to the Residential Tenancy Branch and there is no compelling reason why she could not have done so. I find that the Landlord had the Tenants' forwarding address as of May 3, 2021 and therefore she had an address for service of her documents. The Tenants have waited almost four months for this hearing and an adjournment would result in a further delay of many months. The Landlord's request for an adjournment was denied. The hearing proceeded.

Issues to be Decided

- Are the Tenants entitled to recover money spent on emergency repairs?
- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties testified that the tenancy began on January 1, 2021. Rent in the amount of \$1,580.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$790.00. The Tenants provided a copy of the tenancy agreement. The parties testified that the tenancy ended at the end of April 2021.

Emergency Repairs

The Tenants testified that in February 2021 they noticed issues with water on the ceiling of the rental unit. The Tenant testified that the Landlord came down and pulled down some drywall. The Tenant testified that the Landlord put up a thin sheet of plastic as a temporary barrier and later put a drywall patch in.

The Tenant stated that they believed there was mold in the ceiling and the Landlord was refusing to fix/ deal with that. The Tenant testified that they asked the Landlord to deal with mold and the in response the Landlord sprayed the area.

The Tenant made arrangements for a company to come into the rental unit and complete an assessment. The Tenant testified that they did not ask the Landlord to arrange for the assessment. The Tenants testified that they did not ask the Landlord to pay for the assessment. The Tenants testified that the report shows the ceiling area is a hazard. The Tenant testified that the assessor looked at the area and stated there was mold; however, the samples were not sent for toxicology tests.

The Tenants are seeking to recover the cost of the assessment from the Landlord.

In reply, the Landlord stated that he never received the Tenants' invoice until they provided their disclosure documents for this hearing. The Landlord testified that the invoice is dated for the day after the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord testified that he was never contacted to arrange an assessment and never gave approval for an assessment to be conducted and he also never agreed to pay for an assessment.

The Landlord testified that they attended the rental unit on February 27 to deal with the repair and the Landlords maintenance person attended the unit on March 1, 2021 but was turned away by the Tenants. The Landlord stated that the Tenants hindered the repair process by asking the Landlord to wait for one week due to them working on a thesis.

The Landlord is not in agreement to reimburse the Tenants for the cost of a mold assessment.

Money Owed or Compensation for Damage or Loss

The Tenants clarified that this claim is for the return of their security deposit.

The Tenants testified that there was no agreement that the Landlord could retain any amount of the security deposit at the end of the tenancy. The Tenants testified that the Landlord has not returned any amount of the security deposit to them. The Tenants stated that they provided their forwarding address to the Landlord via email on April 30, 2021.

In reply, the Landlord confirmed that she did not return the security deposit to the Tenants and did not make a claim against the security deposit by filing for dispute resolution. The Landlord confirmed that she received the Tenants' forwarding address on May 3, 2021.

The Landlord stated that the Tenants left the countertops in the rental unit damaged, and the repairs needed in the rental unit would exceed the amount of the security deposit.

Analysis

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 33 of the Act states that "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.

33(3) of the Act provides that 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.*

Section 33(5) of the Act provides that 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.*

Section 33(6) provides that 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);*
- (c) the amounts represent more than a reasonable cost for the repairs;*
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities I make the following findings:

Emergency Repairs

I find that the Landlord promptly attended the rental unit to deal with / repair a reported water leak. I find that the Tenants' decision to arrange to have a mold assessment is not an emergency repair. I find that the Tenants did not contact the Landlord beforehand, and the Landlord did not give authorization to have an assessment completed and did not agree to pay for an assessment.

In accordance with section 33(6) of the Act I find that the Landlord is not required to reimburse the Tenants for the cost of the assessment because there is insufficient evidence from the Tenants that the assessment was needed due to an emergency and the Tenants did not attempt to first contact the Landlord to arrange for an assessment.

The Tenants claim to be reimbursed for the cost of an assessment is dismissed without leave to reapply.

Security Deposit

I find that the Landlord received the Tenants forwarding address on May 3, 2021 which is three days after it was sent to the Landlord using email.

I find that the Landlord did not repay the security deposit of \$790.00 to the Tenants within 15 days of receiving their forwarding address and the Landlord did not file for dispute resolution and make a claim against the deposit.

I find that there was no written agreement that the Landlord could keep any amount of the security deposit.

If the Landlord wanted to keep the security deposit towards damaged countertops, the Landlord was required to apply for dispute resolution within 15 days and make a claim against the deposit.

I find that the Landlord breached section 38 of the Act and therefore must pay the Tenants double the amount of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I award the Tenants a monetary order in the amount of \$1,680.00 for the return of double the security deposit and the cost of the filing fee. For enforcement, this monetary order must be served on the Landlord and may be enforced in Provincial Court.

Conclusion

The Tenants were successful with their claim for the return of double the security deposit and the cost of the filing fee.

The Tenants claim for reimbursement of an emergency repair is dismissed without leave to reapply.

I award the Tenants a monetary order in the amount of \$1,680.00 for the return of double the security deposit and recovery of the 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: August 18, 2021

Residential Tenancy Branch