



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAKA HOLDINGS LIMITED and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRT, RR, RP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”) to request an order for regular repairs, for a monetary order for compensation for my monetary loss or other money owed, for the recovery of their cost of emergency repairs made during the tenancy, for a rent reduction, and to recover the filing fee for this application. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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 Matter – Issue Severed

During the hearing, the Tenant testified that all of the requested repairs included in this claim had been completed as of the date of the hearing.

As the repairs claimed for in these proceedings have been completed, I find that there is no requirement in this hearing to hear the Tenant's claim for an order for repairs. I will proceed with the Tenant's application regarding their request for a monetary order for the recovery of their costs to complete emergency repairs, a rent reduction, and the recovery of the filing fee.

Issues to be Decided

- Is the Tenant entitled to a monetary order for the recovery of their costs to complete emergency repairs?
- Is the Tenant entitled to a rent reduction?
- Is the Tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that the tenancy began on November 1, 2020, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. That rent in the amount of \$3,100.00 a month is to be paid by the first day of each month, and that the Tenant paid a \$1,550.00 security deposit. The Tenant submitted a copy of the tenancy agreement and addendum into documentary evidence.

The Tenant testified that they are seeking the recovery of their costs for emergency repairs to the primary heating system for the rental unit in the amount of \$194.25 for a service call and 25% of a fuel refill in the amount of \$125.00. The Tenant testified that the Landlord neglected to advise them that they could not let the heating fuel tank run dry and that due to this neglect, they had let the tank run dry before refilling it, creating

the need for the service call. The Tenant submitted two invoices bills into documentary evidence.

The Landlord testified that the tenancy agreement clearly states that payment of heating fuel is the responsibility of the Tenant and is not included in the rent. Additionally, the Landlord testified that they had advised the Tenant, at the beginning of the tenancy, that they had provided the tenant with an initial amount for fuel, that the Tenant needed to open an account with the fuel company, that the contact information for the fuel company was on a sticker attached to the fuel tank and that they need to call that number to get more fuel.

The Tenant testified that they are seeking the recovery of their costs for emergency repairs in the amount of \$81.00 for the purchase of extra garbage bins and \$61.63 in the cost of renting a moving truck to take the excess garbage to the dump that the weekly street garbage pick up would not take. The Tenant testified that they had contacted the municipality and the Landlord about getting larger garbage bins but that the municipality would only provide the larger bins if the Landlord made the request but that the Landlord had not done as the Tenant had requested. The Tenant submitted three invoices bills into documentary evidence.

The Landlord testified that they had provided the Tenant with one garbage bin, two yard waste bins and one recycling basket and that if the Tenant had so much garbage that it overflowed the provided bins, it was the Tenant's responsibility to cover the costs to have that excess garbage removed, not the Landlord. The Landlord testified that they had submitted the request for larger garbage bins to the municipality.

The Tenant testified that they are seeking the recovery of their costs for emergency repairs in the amount of \$65.00 to fix a drafty window.

The Landlord testified that they had not been advised that the window in the rental unit required repair and that if they had been informed, they would have called a professional to make the necessary repairs. The Landlord also testified that they had not been provided with receipts of the value of the amount claimed for the window repair.

The Tenant testified that they are seeking a rent reduction of \$300.00 per month due to the Landlord misleading them in regard to the true heating and energy cost to run the rental property. The Tenant testified that the Landlord assured them that the heating

fuel and electricity cost to run the rental property was about \$150.00 per month. However, it has actually cost the Tenant about \$500.00 per month to provide heat and electricity to the rental property. The Tenant testified that they would not have rented this property at the agreed to monthly rent amount had they been properly informed of the actual costs of heating fuel and electricity for the property, stating that they would have either not taken place or negotiated a lower rent payment. The Tenant submitted one electricity bill and seven heating fuel bills into documentary evidence.

The Landlord testified that at no time had they assured the Tenant that the heating and electricity costs for the rental property would be \$150.00 per month. The Landlord testified that they had never lived on the property themselves, so they could not say what the costs would be for these Tenants. The Landlord also testified that they would not have compared this tenancy to the last tenancy, as the last tenancy was only two people, and this tenancy is currently eight people, and the energy uses could not be comparable.

The Landlord testified that when they rented the property to the Tenant, it was just a couple they rented to, but that since the tenancy started, the Tenant has moved in several other people into the rental unit, and that now there are seven to eight people residing on the rental property. The Landlord argued that the addition of these extra people had increased the costs of utilities to run the property and the amount of garbage. The landlord testified that the addition of these extra people was never negotiated or agreed to by the Landlord and that the extra cost of these people living on the rental property is not the financial responsibility of the Landlord.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant had claimed for \$644.63 in the recovery of their cost for emergency repairs; consisting of \$194.25 in heating fuel service call, \$125.00 in the recovery of 25% of heating fuel refill cost, \$81.00 in new trash bins, \$60.63 for a moving truck, and \$65.00 for window repair. Section 33 of the *Act* defines what is considered an emergency repair and set the conditions in which a Tenant may make emergency repairs to a rental unit, stating the following:

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,
 - (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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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.

(4) A landlord may take over completion of an emergency repair at any time.

(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);*
 - (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.*
- (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 33(a) of the *Act* set five areas of repair in a tenancy that may be considered an emergency repair. Section 33 of the *Act* also gives the tenant the right to make these specific repairs and charge their costs back to the Landlord, in cases where the Landlord had failed to make the repairs themselves after being notified of the need repair.

I have reviewed the Tenant's claim for the recovery of their cost for emergency repairs, and I find that three of the items they have claimed, \$81.00 in new trash bins, \$60.63 for a moving truck, and \$65.00 for window repair, do not fall under the definition of "emergency repairs" under section 33 (a) of the *Act*. As these three repair items were not emergency repairs, I find that the Tenant was not within their rights to make these repairs on their own and charge the cost of the repairs to the Landlord. The Tenant's recourse for these three repair items would have been to have a hearing with the Residential Tenancy Branch, requesting an order be issued, ordering the Landlord to make these repairs. Consequently, I must dismiss the Tenant's claim for the recovery of their cost of \$81.00 in new trash bins, \$60.63 for a moving truck, and \$65.00 for window insulation as these items do not constitute an emergency repair.

As for the Tenant's claim for \$194.25 in heating system repair, and \$125.000 in heating fuel, section 33(a) of the *Act* defines the primary heating system as an emergency repair and does permit a tenant to make repairs and charge their costs back to the landlord, if the Tenant has made two attempts to contact the Landlord regarding the required emergency repair, and the landlord has not made the required repairs.

However, in this case, I accept the agreed-upon testimony that the primary heating system was not malfunctioning but had run out of fuel creating the need for a service call. I have reviewed the Tenancy agreement and attached an addendum, submitted into evidence by the Tenant, and I noted that the heating fuel was not included in this tenancy. I have also reviewed the heating system repair invoice, noting that the repair was required as the Tenant had allowed the fuel in the tank to run out, causing air to get into the fuel line.

After reviewing this evidence, I find that the primary heating system was not malfunctioning, and did not require repair, but that the Tenant had allowed the fuel tank to run dry, causing the need for the tank lines to be serviced and the tank to be refilled. Based on the terms of this tenancy agreement, I find that it is the Tenant's financial responsibility to maintain a suitable level of heating fuel in the fuel tank, and that the Tenant's actions of allowing the fuel to run out did not constitute an emergency repair and that the refilling of the fuel tank and the required service call is the Tenant's expense under this tenancy agreement. Therefore, I dismiss the Tenant's claim for the recovery of \$194.25 in heating system service call and \$125.000 in heating fuel.

As for the Tenant's claim for a \$300.00 a month rent reduction, the Tenant has claimed that the Landlord had mislead them on the true cost of fuel and electricity requirements for the rental property during the negotiation of this tenancy agreement. During these proceedings, the parties, in this case, offered conflicting verbal testimony regarding what was communicated to the Tenant as the potential cost of heating fuel and electricity for the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, it is the Tenant who holds the burden to prove their claim.

I have reviewed the documentary evidence submitted by the Tenant, and I find that there is no evidence before me to support the Tenant's claim that the Landlord had mislead the Tenant regarding the possible cost of fuel and electricity of this tenancy. Therefore, I must dismiss the Tenant's claim for a \$300.00 rent reduction for this tenancy.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was not successful in their application, I

find that the Tenant is not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

I dismiss the Tenant's application in its entirety.

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: September 1, 2021

Residential Tenancy Branch