



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, OLC, MNDCT, RP, MNRT

Introduction

This hearing was scheduled to deal with a tenant's application for:

- Orders for the landlord to make repairs
- Orders for the landlord to comply with the Act, regulations, or tenancy agreement
- Monetary compensation for emergency repairs made by the tenant
- Monetary compensation for damages or loss under the Act, regulations, or tenancy agreement

Both the landlord and the tenant appeared for the hearing. The landlord had another person with him who stated he was present to assist the landlord with English as the landlord did not speak English well (this person is referred to as JM in this decision). The tenant had two witnesses with her at the start of the proceeding. The witnesses were excluded with instructions to wait elsewhere until called to testify.

The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

It was unnecessary to call the tenant's witnesses during the remainder of the hearing as the matters addressed were limited in scope to repair orders for reasons provided below.

It should also be noted that during the hearing it became obvious that JM was more than a translator for the landlord and he had personal knowledge concerning the tenancy as he had also been acting on behalf of the landlord during the tenancy, including meeting with the tenant when the tenancy formed and collecting rent.

Preliminary and Procedural Matters

1. Service of hearing materials

As for service of hearing materials, the tenant testified that she provided the landlord with her proceeding package by leaving it in the rental unit mailbox and informing the landlord there was something for him to pick up. The tenant stated she served this way because she was uncertain as to the landlord's service address, as explained in greater detail below. The landlord confirmed that he retrieved the proceeding package out of the mailbox at the rental property when he went to the rental property expecting to retrieve rent out of the mailbox. Although this method of service does not comply with section 89 of the Act, considering the landlord acknowledged receipt of the package and had prepared a response to the claims against him, I deemed the landlord appearing before me to be sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The tenant had named a second landlord on her Application for Dispute Resolution but that person was not at the hearing and I did not deem that person sufficiently served. As such, I amended the style of cause to exclude the second named respondent.

I noted that the Residential Tenancy Branch had received evidence from the tenant on September 21, 2021. The tenant acknowledged she did not serve the evidence package upon the landlord. As such, I found the evidence inadmissible.

I noted that the Residential Tenancy Branch had received evidence from the landlord on August 23, 2021. The landlord testified that he placed the landlord's evidence in the mailbox at the rental unit the same day, August 23, 2021. The tenant responded that no evidence package was found in the mailbox and she checks the mailbox regularly. Rather, the tenant described receiving a few documents concerning a hearing coming up on October 25, 2021. I was unsatisfied by the disputed oral testimony that the landlord served his evidence package for this proceeding and the landlord's evidence package was not admitted either.

Since I was unsatisfied that the evidence of either party was served on the other party, and there was no detailed calculation provided to show how the tenant's monetary claim was calculated, as are required under the Rules of Procedure, I informed the parties that I would dismiss the tenant's monetary claims with leave to reapply but I would proceed by hearing oral testimony concerning outstanding repairs. I noted that the

tenant's request for orders for compliance were essentially the same as the request for repair orders.

2. Identity of landlord(s)

The landlord pointed out that the spelling of the landlord's name on the tenant's Application for Dispute Resolution was incorrect. The tenant stated she was uncertain as to the identity of her landlord as: the tenancy agreement identifies one person whom she has never met, but she met and dealt with JM in person when the tenancy formed and for the first part of the tenancy, and then the landlord appearing at the hearing starting serving her eviction notices. Also, the landlord's service address on the tenancy agreement and the eviction notices is different.

I asked who the tenant pays rent to and she said it is paid in cash, that she is not provided receipts, and it was given to either JM, the landlord, or left in the mailbox at various times.

The landlord testified that he and his wife are the registered owners of the property and they are the landlords. JM acknowledged that it was he who met with the tenant when the tenancy formed and he took rent from the tenant until the landlord returned from India. JM acknowledged he did not issue rent receipts to the tenant for cash payments. JM explained the person named on the tenancy agreement is the landlord's sister. The landlord testified that his sister and JM have ceased acting as his agent since September 2020. The landlord acknowledged that he has taken rent, in cash, from the tenant without issuing receipts; but he has issued eviction notices to the tenant using his name and mailing address. The landlord acknowledged that the service address on the tenancy agreement is an old address belonging to his sister and the tenant may not have been informed of the change in name and service address of the landlord.

I cautioned the landlord that a landlord MUST issue receipts for cash payments by a tenant under the Act. I also cautioned the landlord that a landlord is required to provide the tenant with their correct legal name and their service address under the Act. If the name and/or service address for the landlord changes during the tenancy it is upon the landlord to notify the tenant of such, in writing.

I have recorded the name of the registered owners and their service address, as provided to me by the landlord, on the cover page of this decision for the tenant to use in naming and serving the landlords in the future.

I have also amended the style of cause to reflect the correct spelling of the landlord's name.

3. Status of tenancy

The landlord indicated he has filed two Applications for Dispute Resolution seeking to end the tenancy (file numbers provided on cover page of this decision).

According to the Residential Tenancy Branch records, the landlord has a hearing set for October 25, 2021 to deal with the landlord's application for an early end of tenancy due to urgent and severe circumstances.

The other Application for Dispute Resolution filed by the landlord is a request for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure. A decision has not yet been issued as of the date of the hearing or at the time of writing this decision. As such, I proceed to continue to hear the request for repair orders as a decision concerning the end of the tenancy has not yet been reached.

During the hearing, the landlord stated that he would continue the tenancy if the tenant paid the outstanding rent. I strongly encouraged the parties to ensure that if rent is paid in cash that a receipt be issued identifying the amount paid, the date paid, the landlord's name, the tenant's name, address of rental unit, and what the payment is for. I also informed the parties that outstanding repairs is not a basis for a tenant to withhold rent and non-payment of rent is not a basis for a landlord to ignore or refuse to make repairs under the Act.

Issue(s) to be Decided

Is it necessary and appropriate to issue repair orders?

Background and Evidence

It was undisputed that in December 2019 or thereabouts a written tenancy agreement was executed requiring the tenant to pay rent of \$2250.00 on the first day of every month and a security deposit of \$1100.00. The rental unit was described as a house with basement or crawlspace.

Below, I have summarized the current outstanding repair issues:

Roof leaking

The tenant testified that the roof has been leaking since 2020. She notified the landlord or his agent of the matter and someone came to look at the roof on two occasions but nothing was done and it still leaks in the kitchen and ensuite bathroom.

The landlord acknowledged that he received complaints from the tenant concerning a leaking roof and he sent a roofer to the property. The landlord stated he was billed approximately \$200.00 by the roofing company to replace caulking around a vent stack and clear tree debris off the roof. The landlord claimed he was unaware the roof is still leaking.

The landlord was agreeable to having a roofer attend the property within one week to inspect the roof and make necessary repairs.

Heating ducts

The tenant testified that the heating ducts require cleaning as rats were running in the ducts, leaving droppings, and the ducts are not connected resulting in the warm air spilling into the basement/crawl space. As a result, the tenant does not have adequate heat. The tenant testified that she notified the landlord of this a couple of times and in response sent someone to the property on two occasions but when she told the contractor that the ducts needed connecting in the basement/crawl space the contractor declined to do the work.

The landlord testified that he had the furnace replaced in 2019 and he acknowledged the tenant complained to him a number of times about the ducts so he sent a contractor over to the property but the tenant declined to permit the contractor entry. The tenant denied that to be accurate and stated she wants the heating ducts cleaned and connected so that she can use the furnace and get heat.

The landlord was agreeable to having a contractor attend the rental unit to get the ducts cleaned and ensure they are connected. The landlord was also agreeable to attending the rental unit with the contractor to ensure the contractor connects the ducts if needed.

Clothes washer/dryer

The tenant testified that when the tenancy started, she provided her own washer and dryer because the landlord's laundry machines did not work. Now, her laundry machines are not working and she wants the landlord to provide her with new laundry machines.

The landlord testified that laundry machines are not included in the rent under the tenancy agreement.

I asked the tenant to turn to her copy of the tenancy agreement and look to the section that provides for the appliances included in rent. The tenant did so during the hearing and acknowledged that the tenancy agreement indicates that laundry is not provided.

Fridge not working

Although the tenant did not identify this on the Application for Dispute Resolution because it is more recent, the tenant stated the fridge has stopped working.

The landlord responded that he was unaware of this issue but he was agreeable to having the fridge repaired or replaced within a week.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the tenant's request for repairs.

Under section 32(1) of the Act, a landlord has a duty to repair and maintain the residential property so that the property:

- (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.

It is undeniable that a roof is an integral component of a building envelope and allowing water ingress is conducive to creating an unhealthy and unsafe living accommodation, let alone damage to the property itself. As such, I find the landlord is required to ensure the roof is not leaking.

A tenant also requires heat to ensure the rental unit is suitable for occupation. Having heard the rental unit is heated by a furnace, it is imperative that the ducting that carries

the heat from the furnace to the living areas are connected, clean and operating as it is intended. Residential Tenancy Branch Policy Guideline 1 provides as follows with respect to furnaces and ducting:

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.
2. The tenant is responsible for cleaning floor and wall vents as necessary.

[My emphasis underlined]

The landlord's obligation to repair and maintain a property also extends to the appliances provided to the tenant as part of the rent as a landlord cannot terminate a service or facility (which includes appliances) provided to the tenant under the tenancy agreement without giving advance notice and compensation to the tenant. Residential Tenancy Branch Policy Guideline 1 also provides:

MAJOR APPLIANCES

1. At the end of the tenancy the tenant must clean the stove top, elements, and oven, defrost, and clean the refrigerator, wipe out the inside of the dishwasher.
2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.
3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

[My emphasis underlined]

The tenant has sought repairs or replacement of the fridge. It is undisputed that the fridge is an appliance provided to the tenant under the tenancy agreement. Accordingly, I find it is the landlord's obligation to ensure the fridge is working properly.

As for the washer and dryer, I am not satisfied that these appliances were to be provided to the tenant by the landlord under the tenancy agreement. As such, I make no order against the landlord for repair or replacement of laundry machines.

In keeping with all of the above, and the landlord's willingness to have the repair issues addressed within one week, **I issue the following orders to the landlord:**

1. Within one week of October 7, 2021 the landlord must have the roof inspected and commence necessary repairs to stop leaking.
2. Within one week of October 7, 2021 the landlord must attend the rental unit with a contractor to ensure the heating ducts are connected and have the heating ducts cleaned.
3. Within one week of October 7, 2021 the landlord must have the fridge repaired or replaced.
4. The landlord must not enter the rental unit to accomplish the above stated orders unless he gains the tenant's express consent to enter or by giving the tenant a written 24 hour notice of entry as provided under section 29(1) of the Act.

For the parties' further reference, section 29(1) of the Act provides as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

[My emphasis underlined]

Where the landlord obtains the tenant's consent to enter the rental unit or has given the tenant a written 24 hour notice in accordance with section 29(1) of the Act, the tenant must not interfere with the landlord's entry.

Failure of the landlord to comply with my orders, may be basis for the tenant to seek further enforcement through the Compliance and Enforcement Unit of the Residential Tenancy Branch; and/or make another Application for Dispute Resolution that may include additional orders and/or monetary compensation for the tenant.

Conclusion

I have issued repair orders to the landlord within this decision. The landlord's entry into the rental unit must be accomplished in accordance with section 29(1) of the Act.

The tenant's monetary claims are dismissed with leave to reapply.

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 08, 2021

Residential Tenancy Branch