



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

On October 21, 2021, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") for an order for the Landlord to make emergency repairs to the rental unit and for the recovery of the filing fee for this application. The matter was set for a conference call.

The Landlord and the 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. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

Both parties were provided with the opportunity to present her evidence orally and in written and documentary form and to make submissions at the hearing.

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.

Issues to be Decided

- Is the Tenant entitled to an order for Emergency repairs to the rental unit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the sewer system had backed up into the rental unit on October 13, 2021, and again on October 16, 2021. The Tenant testified that the flood on October 16, 2021, had been very bad and that they and their children had been living in a hotel since October 16, 2021. The Tenant testified that they are requesting an order that the Landlord restores the removed flooring, repair the sewer water damaged walls, and clean up the sewer material left in the rental unit after the flood.

The Landlord testified that they agreed the sewer system had backed up into the rental unit on October 13, 2021, and again on October 16, 2021, and that the required repairs to the sewer system had been completed as of October 19, 2021, before the date of these proceedings. The Landlord also testified that they agreed that the restoration repairs were still required in the rental unit but that these repairs had been delayed due to the Tenant's refusal to remove their personal property from the affected areas of the rental unit, so the Landlord's restoration team could not make the required repairs.

The Landlord testified that they have hired a restoration company to make the required repairs to the rental unit and that the company has advised them it will take eight to 12 weeks to complete the work.

The Tenant testified that there were no available storage spaces in their community and that they asked the Landlord if they could use the shed on the property to store their stuff but that the Landlord refused.

The Landlord testified that the shed is old and that they do not believe the Tenant's personal property would be safe in the shed. The Landlord testified that most of the Tenant's personal property could be stored in the unaffected rooms of the rental unit.

Analysis

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

During these proceedings, both the Tenant and the Landlord agreed that there had been a sewer backup in the rental unit and that the post-flood restoration of the rental unit is still required. Section 33 of the *Act* states 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.*

Pursuant to section 33(1b) of the *Act*, I find that the repairs required to this rental property are as a result of a blocked sewer pipe and constitute Emergency Repairs of a health or safety nature and that these repairs must be completed as soon as reasonably possible. I accept the Landlord's testimony that they have secured a restoration company to complete the necessary repairs and that they agreed to have all required repairs to the rental unit completed with the companies estimated timeline of 8-12 weeks. Accordingly, I order the Landlord to complete all required repairs to this rental unit no later than January 25, 2022. The Landlord must use a certified technician were required for these repairs.

I also order the Tenant to comply with the renovation companies requirements to move or remove their personal property as required in order to allow access to the damaged areas of the rental unit.

Additionally, due to the biohazard nature of this incident, I find the rental unit to be uninhabitable during the renovation period, and that much of the Tenant's personal belonging will have to be removed in order to complete the renovation of the rental unit. Therefore, I order that the rent for this rental unit be reduced to zero (\$0.00), effective November 1, 2021, and will remain zero until the required repairs are completed.

If the Tenant has already paid the rent for November 2021, they are granted permission to deduct their November rent payment from their first month's rent due once the repairs are completed.

If there is a dispute between these parties as to the date the repairs to the rental unit are completed, the Landlord must apply for and obtain an order from this office confirming the date of repair completion and the date the reduced rent returned to the normal monthly amount.

Additionally, 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 has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Tenant to take a one-time deduction of \$100.00 from their first month's rent due once the repairs are complete, in full satisfaction of this award.

Conclusion

I hereby order the Landlord to make all necessary restoration and repairs to the rental unit no later than January 25, 2022.

I hereby order that the rent for this rental unit be reduced to zero (\$0.00), effective November 1, 2021, until the restoration and repair of this rental unit are completed.

I hereby order the Tenant to comply with the requirements of the restoration company and the Landlord to move their personal property in order to make the required repairs.

I grant permission to the Tenant to take a one-time deduction of \$100.00 from their first month's rent due once the repairs are complete, in full satisfaction of this award.

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 2, 2021

Residential Tenancy Branch