



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on December 22, 2021 (the “Application”). The Tenants applied for an order that the Landlord make emergency repairs.

The Tenant appeared at the hearing and appeared for Tenant L.T. The Landlord appeared at the hearing late. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant sought to dispute a One Month Notice in addition to the request for emergency repairs. I told the Tenant I would not consider a dispute of a One Month Notice because this issue was not properly before me on the Application.

The name of the landlord on the Application is different than the name of the Landlord. Both parties agreed the Landlord is the landlord in this matter and therefore I have amended the Application and the correct name of the Landlord is in the style of cause.

The Tenant submitted a “Notice” as evidence; however, this is not relevant to the request for emergency repairs and I have not considered it.

The Tenant testified that they served the hearing package on the Landlord in person January 12, 2022. The Landlord confirmed receipt of the hearing package and did not raise any issues with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided. I will only refer to the evidence I find relevant in this decision.

I note that prior to ending the hearing, the Tenant said they had to go and were hanging up. The Tenant did not hang up and remained in the conference call until the end of the hearing.

Issue to be Decided

1. Are the Tenants entitled to an order that the Landlord make emergency repairs?

Background and Evidence

The Landlord testified as follows in relation to a tenancy agreement in this matter. There is a written tenancy agreement between the parties. The tenancy started in November of 2021 and is a month-to-month tenancy. Rent is \$1,250.00 due on the first day of each month. The Tenants paid a \$600.00 security deposit.

The Tenant testified that the tenancy started December 01, 2021 and the Tenants paid a \$625.00 security deposit. The Tenant agreed with the remaining details of the tenancy agreement as set out by the Landlord.

In relation to emergency repairs, the Tenant testified that the toilet is plugged, they do not have keys to the rental unit, the taps in the kitchen sink do not work and the kitchen light does not work.

I told the Tenant I could only deal with the issues noted on the Application which included the toilet and taps not working. Upon further review, the Application only mentions the toilet not working; however, I have considered the toilet and taps issue because the parties provided testimony about both at the hearing.

The Tenant testified as follows. The taps in the kitchen sink are not working. The toilet is not flushing and gets plugged. The Tenants have to use a plunger to unplug the toilet three to four times a day.

The Landlord testified as follows. Everything in the rental unit was working at the start of the tenancy. The Tenants did not tell the Landlord about issues with the rental unit.

The Tenants broke the tap in the kitchen sink and the Landlord is not responsible for this. The Tenants are also responsible for the issue with the toilet as it was working fine at the start of the tenancy.

In reply, the Tenant acknowledged that someone they brought in to fix the kitchen sink taps broke the taps and that the Tenants are responsible for this. The Tenant denied that the Tenants broke the toilet.

Analysis

The relevant sections of the *Residential Tenancy Act* (the “Act”) state as follows:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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.

62 (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove the claim and the claim fails.

In relation to the kitchen sink taps, the parties agreed that the Tenants, or someone they let into the rental unit, broke the taps. Pursuant to section 32(3) of the *Act*, the Tenants are responsible for fixing the kitchen sink taps given they, or someone they let into the rental unit, broke them. It is not the Landlord's responsibility to fix the taps that the Tenants, or someone they let into the rental unit, broke.

In relation to the toilet, the parties disagreed about which one of them caused the damage to the toilet. Given this, I have considered what further evidence there is before me supporting each position. I find there is no further evidence before me supporting the Tenant's position because there is no documentary evidence before me about the toilet issue and the Tenant did not call witnesses at the hearing in relation to the toilet issue. In the circumstances, I find the Tenants have failed to prove they are entitled to an order that the Landlord fix the toilet because I am not satisfied based on the evidence provided as to which party is responsible for causing the toilet issue.

Given the above, I dismiss the Application without leave to re-apply.

Conclusion

I dismiss the Application without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 20, 2022

Residential Tenancy Branch