



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for an order for emergency repairs, pursuant to section 33.

Tenants MC (the tenant) and DD and landlord MS attended the hearing. The landlord was assisted by agent RS (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service

The notice of hearing is dated April 25, 2022. It states: "The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent".

The tenant affirmed she served the notice of hearing in person on April 24, 2022. Later the tenant corrected the date to April 25, 2022 or the day after she received the notice of hearing. The tenant believes she served the evidence.

The landlord stated he only received the notice of hearing in person on April 26, 2022.

The landlord testified he attached the response evidence to the tenant's front door on May 26, 2022. The tenant confirmed receipt of the landlord's response evidence and that she had enough time to review the documents.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

Residential Tenancy Branch Policy Guideline 12 states:

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Based on the testimony offered by both parties, I find the tenant served the notice of hearing in accordance with section 89(1)(a) of the act.

The tenant's testimony about service of the evidence was vague. The landlord's testimony about service of the tenant's evidence was convincing. I find the tenant failed to prove that she served the evidence. Thus, I am excluding the tenant's evidence from consideration.

Based on the testimony offered by both parties, I find the landlord sufficiently served the response evidence, per section 71(2)(c) of the Act.

Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing landlord MS corrected the spelling of his first name.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Issue to be Decided

Is the tenant entitled to an order for emergency repairs?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on October 15, 2021. Monthly rent is \$700.00, due on the 15th day of the month. The tenant said the landlord collected and holds a security deposit of \$375.00. The landlord affirmed the security deposit is \$350.00. The tenancy agreement was submitted into evidence. It indicates the tenant is MC and the security deposit is \$350.00.

Both parties agreed the tenant rents one bedroom in a 2-bedroom rental unit and shares the common areas with other tenants.

The tenant is claiming emergency repairs for the electrical system, plumbing repairs and the shower handles.

The tenant stated the electrical system needs to be repaired, as the breakers constantly flip, and the electrical plugs cannot be used for days. The tenant uses flashlights when the breakers flip, as the rental unit's lights do not work when the breaker flips. The tenant asked the landlord to repair the electrical system days after she moved in. The landlord's son attended the rental unit to fix the electrical system, but he is not an electrician and did not repair the electrical system.

The landlord testified that on February 19, 2022 a certified electrician attended the rental unit and changed the electrical plugs and some wires. The electrician is not related to the landlord. The electrician informed the landlord that the tenant was overloading the electrical system because she has a large number of electronic devices plugged to the electrical plugs. The electrician's assistant returned to the rental unit on March 18, 2022 and concluded the electrical system did not need further repairs.

The landlord submitted a letter dated April 03, 2022, signed by HA:

I HA certified electrician certify that in the month of February 19, 2022, [landlord], owner of [rental unit's address] called me for fixing the electrical issues in his basement. I checked the same and 15AMP outlet plug was charged because of inside wires and plug were burnt out because of overloading on wires by the tenant lady. Everything regarding electricity was running smoothly with the satisfaction of the landlord.

Again on March 13, 2022 and March 14, 2022, I was called by the landlord to fix the issues, if any, of the basement of his house because the lady tenancy was again complaining for electrical issues. When I visited the basement, nobody opened the doors of basement and I returned without checking the issues if any and receive my visiting charges.

STAMPED: LUCKY POWER SOLUTION [address]

Signed: HA

The tenant said the heat sometimes does not function and the doorbell caught fire because of the malfunctioning electrical system. The landlord affirmed the tenant did not request repairs to the doorbell, he is not aware of a fire and the heat is working properly.

The tenant stated the tub and the kitchen sink fill up with dirty water. The toilet does not flush properly. The tenant reported these issues to the landlord a long time ago and the landlord has not repaired these issues. When it rains heavily the electrical and plumbing issues worsen.

The landlord testified a plumber attended the rental unit in November 2021 and repaired the kitchen sink and the tub using chemical products. The tenant did not complain about plumbing issues after the repair was completed.

The landlord said the tenant from the second bedroom never complained about electrical or plumbing issues.

The landlord served the April 09, 2022 notice to enter the rental unit: "Kindly let the landlord know if you are facing any issue regarding electric, plumbing, etc. in the unit" and the tenant returned it with the letters "NO" (submitted into evidence). The tenant affirmed the letters "NO" are referring to the landlord's notice to enter the unit and that the rental unit continues to need the required repairs.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The legislation makes the landlord responsible for making repairs to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards.

Section 32 (1) of the Act states that:

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.

Residential Tenancy Act Regulations Schedule 8 states:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

Section 33 of the Act states:

(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.

Residential Tenancy Branch Policy Guideline 51 states:

Order for Emergency Repairs

Under section 33 of the RTA and section 27 of the MHPTA, emergency repairs are defined as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of property, and made for the purpose of repairing:

- major leaks in pipes,
- major leaks in the roof (RTA only)
- damaged or blocked water or sewer pipes,
- damaged or blocked plumbing fixtures (RTA only),
- the primary heating system (RTA only),
- damaged or defective locks that give access to a rental unit (RTA only), or
- the electrical systems.

Emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control.

The parties offered conflicting testimony about the required repairs to the electrical system and plumbing. 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.

The applicant did not provide any documentary evidence to support her claim. The applicant did not call any witnesses.

I find the landlord's testimony was more convincing than the tenant's testimony. The April 03, 2022 letter states the electrical system did not need repairs when the certified electrician inspected it on February 19, 2022. The tenant did not provide a written answer to the April 09, 2022 notice to enter inquiring about repairs to the electrical system and plumbing. Thus, I find the tenant failed to prove, on a balance of probabilities, that the rental unit needs repairs to the electrical system or plumbing repairs, as required by section 33(1)(b) of the Act.

Repairs to the showers handles are not considered an emergency repair, per section 33(1)(a) and (c) of the Act.

Thus, I dismiss the tenant's application for an order for emergency repairs.

Conclusion

I dismiss the tenant's application for an order for emergency repairs without 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: June 01, 2022

Residential Tenancy Branch