



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order for emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants and counsel for the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution 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."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The tenants testified that they served the landlord with their application for dispute resolution and evidence in person on March 8, 2023. Counsel confirmed the landlord's receipt of the above documents. I find that the landlord was served with the above documents in accordance with sections 88 and 89 of the *Act*.

Both parties agree that the tenants were personally served with the landlord's evidence, which consisted of a tenancy agreement, on March 24, 2023, two clear days before this hearing. I find that the landlord's evidence was served on the tenants in accordance with section 88 of the *Act*.

Preliminary Issue- Naming of Landlord

Counsel for the landlord named in this application for dispute resolution submitted that the landlord is not the owner of the subject rental property but is an agent for the owners. Counsel submitted that the agent is the tenants' main contact person for tenancy related issues and collects the rent.

The tenants testified that the landlord held himself out to be the owner when the tenancy agreement was signed and was listed as a landlord on the tenancy agreement that was signed.

The landlord entered into evidence a tenancy agreement between the tenants and J.S. The tenants testified that the landlord never gave them a copy of the tenancy agreement after they signed it and that the tenancy agreement entered into evidence by the landlord is not the agreement they signed. The tenants testified that the tenancy agreement was altered without their consent and that J.S. was not listed as the landlord, the landlord named in this application for dispute resolution was named as the landlord.

Counsel submitted that the landlord informed him that the tenancy agreement entered into evidence is the original tenancy agreement signed by the tenants and was not altered.

Section 1 of the *Act* provides the following definition of landlord:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement,
 - or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that the landlord named in this application for dispute resolution meets the definition of a landlord as Counsel confirmed that the named landlord acts as an agent for the owners of the subject rental property. I find that the tenants were at liberty to name the landlord, an agent of the owners, in this application for dispute resolution. I make no findings on the validity of the tenancy agreement or whether it was altered after signing as such a finding is not necessary to render this decision.

Counsel submitted that the tenants provided the shortened name of the landlord in this application for dispute resolution. In the hearing Counsel provided the full legal name of the landlord. In the hearing, pursuant to section 64 of the *Act*, I amended the tenants' application for dispute resolution to state the legal name of the named landlord. Counsel did not object to the above amendment.

Issues to be Decided

1. Are the tenants entitled to an Order for emergency repairs, pursuant to section 33 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2022 and is currently ongoing. Monthly rent in the amount of \$2,800.00 is payable on the first day of each month.

The tenants testified that when they first tried to turn on the heat, in November of 2022, the heat did not work. The tenants testified that they advised the landlord of same and that the landlord has not yet fixed the heat. The tenants testified that the landlord has sent people in to fix the heat but has not been successful.

Counsel submitted that the landlord has tried to fix the heat but has not yet been able to do so but agrees to have it fixed. Counsel submitted that the tenants have not always responded to the landlord's requests for access for the purpose of fixing the heat. This was disputed by the tenants. No documentary evidence to support the above submissions were entered into evidence by the landlord.

The tenants testified that there is black mold in the attic and the landlord has refused to fix it. Counsel submitted that the landlord is willing to deal with the mold.

Analysis

Section 33(1)(iii) of the Act defines emergency repairs as those that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and includes repairing the primary heating system.

Based on the testimony of both parties I find that the primary heating system at the subject rental property is not working, and the tenants are living without heat. Pursuant to section 33(1)(iii) of the *Act*, I find that the repair of the heating system is an emergency repair.

Residential Tenancy Branch Policy Guideline 51 states that:

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

I find that the tenants request for mold remediation is not an emergency repair as defined by section 33 of the *Act* and cannot therefore be heard in this application for dispute resolution. The tenants are at liberty to file an application for dispute resolution for regular repairs regarding the mold.

Section 32(1) of the Act requires a landlord to provide and maintain the residential property in a reasonable state of repair.

I find that the landlord has breached section 32 of the *Act* by failing to make emergency repairs to the heating system in a timely manner. As a result, I order the Landlord to take immediate action to repair or replace the heating system.

If the heating system is not repaired or replaced by April 15, 2023, I find that pursuant to section 65 of the *Act*, the tenants are entitled to receive a rent reduction in the amount of \$1,000.00 per month until the repairs are completed. I make no finding on the reduction in the value of the tenancy from November 2022 to the present as the tenants have not applied for a rent reduction for that time period. The landlord is cautioned that the tenant may apply for further monetary compensation.

To be clear, if the landlord has not completed repairs to the heating system or replaced the heating system by April 15, 2023, the tenants are entitled to a pro-rated rent reduction of \$500.00 for the period of April 16, 2023 to April 30, 2023. If the landlord has not completed repairs to the heating system or replaced the heating system by April 30, 2023, the tenants are entitled to a rent reduction in the amount of \$1,000.00 for May 2023 and each month thereafter, until the heating system is repaired or replaced if needed.

If the landlord completes the necessary repairs, I order that the monthly rent for this tenancy reverts to the regular amount established in this tenancy (i.e., currently \$2,800.00) in the month after the repairs are completed. For example, if the landlord completes repairs on May 5, 2023 the tenants are liable to pay the **normal** amount on June 1, 2023.

I order the tenants to provide reasonable access to the subject rental property for the purposes of repairing the heating system.

As the tenants were successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord in accordance with section 72 of the *Act*.

Conclusion

The landlord is ordered to complete repairs to the rental unit as laid out above.

If the repair work is not completed by April 15, 2023, the tenants are granted a rent reduction in the amount of \$1,000.00 per month from April 16, 2023 until the repairs have been completed.

The tenants are entitled to deduct \$100.00 from rent on one occasion to recover the \$100.00 filing fee.

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: March 27, 2023

Residential Tenancy Branch