



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

The landlord's name was misspelled on the application and has been amended. The tenant had also named a downstairs tenant as a tenant in her application. This person is not a tenant of the subject property and the application has been amended to remove her.

Issues

Should an order be issued requiring the landlord to comply with the Act, regulation or tenancy agreement?

Should an order be issued restricting the landlord's right to enter the rental unit?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The main issue in dispute was a plumbing bill for a clogged/leaking kitchen sink. The tenant notified the landlord of the issue on December 3, 2022. The landlord attended to the rental unit on December 4, 2022 and attempted to fix the clog himself but was unsuccessful. The landlord arranged for a plumber to attend on December 5, 2022.

The tenant subsequently sent a text message to the landlord that she was going to have her friend look at it and requested the landlord cancel the plumber. The friend ended up doing the repair work and invoiced the tenant. A copy of the tenant's text message was submitted as evidence by the landlord.

The tenant claims she only asked the friend to do the repair work as the landlord advised her mom that it was the tenant's responsibility, and the tenant would be responsible to pay for having it fixed.

The landlord submits that he only advised the tenant that they would be responsible "if" the plumber determined the clog was due to the tenant's neglect. The landlord testified that when he inspected the clog he found plastic medicine bottle seals in the pipes, which is why he told the tenant they could be responsible. The landlord's son submits that the landlord never advised the tenant that it was not the landlord's responsibility, in fact, the landlord attended to the issue the day after being notified and had a plumber arranged for the following day. The landlord submits the tenant proceeded to have her friend do repair work without authorization.

Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Section 33 of the Act describes "emergency repairs" as those 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 purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

Subsection 33(3) of the Act sets out that a tenant may make emergency repairs where emergency repairs are needed, the tenant has made at least two attempts by phone to

contact the landlord, and the tenant gave the landlord a reasonable amount of time to make the repairs.

If a tenant has attempted unsuccessfully to have the landlord complete emergency repairs, subsection 33(5) of the Act requires a landlord to reimburse a tenant for emergency repairs if, the tenant claims reimbursement from the landlord and provides the landlord a written account of the emergency repairs accompanied by receipts for the amounts claimed. If the landlord does not reimburse the tenant, then the tenant may deduct the amount from rent or otherwise recover the amount.

Pursuant to subsection 33(6) of the Act, the landlord is not responsible for the cost of emergency repairs where:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find the tenant has failed to establish that she was unsuccessful in attempting to contact the landlord to request the repairs and did not provide the landlord a reasonable opportunity to do the repairs. In fact, the evidence shows that the landlord responded to the request in a timely manner, and it was the tenant that requested the landlord's plumber be cancelled. The tenant then proceeded to have repairs done without authorization. There is insufficient evidence that the landlord ever advised the tenant that she would be responsible regardless of the cause of the clog.

Conclusion

The tenant's application is dismissed in its entirety 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: May 15, 2023

Residential Tenancy Branch