



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **RP OLC FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenant applied for:

- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* (Regulations) and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord, the Tenant and the Co-Tenant (SJ) attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence (NDRP Package) on the Landlord by registered mail on February 10, 2023. The Landlord acknowledged he received the NDRP Package. As such, I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

The Landlord stated he served his evidence on the Tenant by email on May 11, 2023. Although there was no evidence the Tenant had consented to service of documents by email, the Tenant acknowledged receipt of the Landlord's evidence. As such, pursuant to section 71(2)(b) of the Act, I find the Tenant was sufficiently served with the Landlord's evidence and was deemed to have received the email on May 14, 2023, being three days after emailing.

Issues to be Decided

Is the Tenant entitled to:

- an order requiring the Landlord to complete repairs to the rental unit?
- an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement?
- recover the filing fee for the Application from the Landlord?

Background, Evidence and Analysis

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

The Tenant submitted into evidence a copy of a tenancy agreement, dated March 10, 2022, between the Landlord, the Tenant and SJ. The parties agreed the tenancy commenced on November 15, 2022, for a fixed term ending November 1, 2023, with rent of \$2,500.00 payable on the 1st day of each month. The agreement required the Tenant and SJ pay a security deposit of \$1,250.00 by October 5, 2022 and a pet damage deposit of \$1,250.00 by November 15, 2022. Paragraph 3 of the agreement provides garbage collection is a service that is included in the tenancy. The Landlord acknowledged the Tenant and SJ paid the deposits and that he was holding them in trust for the Tenant and SJ.

SJ stated the rental unit has a gas fireplace in the living room of the rental unit. SJ stated the fireplace worked when he and the Tenant moved into the rental unit but there have been ongoing problems with starting it in recent months. SJ submitted into evidence a copy of emails, dated January 28, 2023, in which the Landlord stated:

- the fireplace was working for previous tenants
- he visited the rental unit three times to turn on the pilot
- the Tenant and SJ should stop using the fireplace and to shut off the gas line that leads to the fireplace

The Landlord stated the rental unit is heated by electric baseboard heaters and that the fireplace is not the primary source of heat. The Landlord stated he was not in a financial position to have a professional visit the residential property and that the Tenants were

welcome to call a licensed gas company. SJ stated the Tenant is seeking an order for the Landlord to perform repairs to the fireplace.

Section 32(1) of the Act states:

- 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.

Residential Tenancy Policy Guideline 1 (PG 1) provides guidance on the rights, responsibilities and prohibitions of landlords and tenants during a tenancy. PG 1 stipulates, in part, that a landlord is responsible for repairs to appliances provided under the tenancy agreement; for pest control for the building and property; and for snow removal in a multi-unit building.

Section 62(3) of the Act stipulates that an arbitrator, as a delegate of the Director of the Residential Tenancy Branch, may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that the landlord or tenant comply with the Act, the Regulations or a tenancy agreement.

After careful consideration of the testimony and evidence provided by the parties, I accept the evidence of the Tenant and SJ and I find, pursuant to section 62(2) of the Act, that the tenancy agreement provided the Tenant with a working gas fireplace. I find the Landlord has refused, or neglected, to repair the gas fireplace when requested by the Tenant for repairs to be performed on the gas fireplace. Based on the foregoing, I order the Landlord to arrange for the repair of the gas fireplace by June 23, 2023.

SJ stated there are two rental units on the residential property. SJ stated that, when he and the Tenant initially moved into the rental unit, there was only one bin for garbage. SJ stated that the basement suite was not a legal suite and the municipality in which the residential property is located would only collect one garbage bin at a time. SJ stated the garbage bin was inadequate to handle garbage for four people residing in the rental unit and one person residing in the basement unit. SJ stated the status of the residential property with the municipality has changed and that there are now two garbage containers for the two units. As the issue has been resolved with the garbage bin and collection, SJ stated the Tenant no longer requires an order for the Landlord to comply

with the Act, Regulations and/or tenancy agreement. As such, I dismiss the Tenant's claim for an order that the Landlord to comply with the Act, Regulations and/or tenancy agreement during this proceeding.

As the Tenant has been partially successful in the Application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next months' rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

Conclusion

The Landlord is ordered to have the gas fireplace repaired by June 23, 2023.

The Tenant may deduct \$100.00 from next months' rent in satisfaction of his monetary award for recovery of the filing fee of the Application.

The Tenant's claim for the Landlord to comply with the Act, Regulations and/or Tenancy Agreement is dismissed with 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 24, 2023

Residential Tenancy Branch