



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, RP, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”)
- an order for reduction of rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- an order for repairs to be made to the rental unit, site or property under section 32 of the Act; and
- to recover the cost of the filing fee under section 72 of the Act.

The Applicant Tenant called into this teleconference at the date and time set for the hearing of this matter. The Tenant affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 2:05 P.M. to enable the Respondent Landlord to connect with this teleconference hearing scheduled for 1:30 P.M., the Landlord did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator.

Rule 7.3 of the *Rules of Procedure* states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application with or without leave to reapply. Accordingly, the hearing proceeded in the absence of the Landlord or their Agent.

The Tenant testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on April 5 or 6, 2023 via registered mail. The Tenant was provided with the Materials by the Residential Tenancy Branch on April 5, 2023 and had until April 8, 2023 to serve them in accordance with section 59(3) of the Act.

The Tenant stated they did not have the receipt or Canada Post tracking number available but testified they followed the instructions regarding service provided to them by the Residential Tenancy Branch and served the Materials to the Landlord at the address on the Notice. Based on the testimony from the Tenant, I find that pursuant to sections 89 and 90 of the Act that Tenant’s Materials were sufficiently served to the Landlord.

Preliminary Issue: Effect of the Landlord’s Non-Attendance

Rule of Procedure 6.6 states that the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

Since the Landlord has not attended the hearing or presented any evidence, I find that the Landlord has failed to satisfy their burden of proving the validity of the Notice.

Accordingly, the Tenant’s request to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated March 17, 2023 is granted and it is of no force of effect. The tenancy will continue in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
2. Is the Tenant entitled to an order for repairs?
3. Is the Tenant entitled to recover the filing fee from the Landlord?

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Tenant provided the following testimony regarding the tenancy:

- The tenancy began in August 2017, though they relocated to a new unit within the rental property in late 2019.
- Rent is \$760.00 per month due on the first day of the month.
- A security deposit of \$372.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement, but it was not entered into evidence.
- The tenancy agreement was signed by the Tenant and a previous landlord. A new Landlord took ownership of the property during the tenancy but the date of the transfer of ownership of the rental property is not known.
- The Tenant still occupies the rental unit.

The Tenant testified as follows. There is only one window in their suite and there are no air ducts or ventilation which means that dust accumulates in the rental unit. They noticed they were having issues breathing and believe this was due to mould and dust collecting in the unit. They spoke with the previous Landlord and asked for a solution.

They called the Landlord “three or four times” between one and two years ago regarding the ventilation in the rental unit. Their requests were ignored. I was referred to a photograph submitted into evidence by the Tenant which shows the inside of a wooden cupboard or shelving unit with grey dust accumulated in the corner.

Around one year prior to the hearing the Tenant engaged the services of a cleaning company. Three cleaners worked for a few hours. The Tenant seeks an \$800.00 one-time reduction in rent as compensation for the associated costs. The Tenant did not submit any receipts or invoices confirming the actual costs and stated the figure put forward was a “ballpark figure”.

The Tenant stated that repairs were required to the rental unit. There is a hole in the wall of the shower in the bathroom of the rental unit. This was verbally reported to the previous landlord and the current Landlord is not aware. The Tenant had changed suites within the rental property some time in late 2019 and the hole was present when they took occupancy of the rental property. There was no documentation prepared by the previous landlord to confirm the condition of the rental property when the Tenant took occupancy.

I was referred to a photograph of the hole that had been submitted into evidence by the Tenant. The photograph shows a significant hole in the a wall, leaving exposed masonry behind it. There are cracks emanating from the hole and what appears to be grey mould growing within the cracks. The Tenant stated they think water from the shower will get behind the wall and cause mould.

Analysis

Reduction of rent for repairs, services or facilities not provided

Section 65 of the Act allows the Director to order a tenant may deduct an amount from rent that is equivalent to a reduction in the value of a tenancy agreement. The Tenant seeks to reduce rent by \$800.00 to compensate them for cleaning costs incurred after dust and mould accumulated in the rental suite.

Based on the testimony of the Tenant, I do not find there to be sufficient evidence of a breach of the Act on the Landlord's part. I find that the level of dust and mould shown in the evidence before me to be relatively minor and not an indication of a defect within the structure of the rental property. The Act does not impose any obligations onto a landlord regarding ventilation specifically.

Furthermore, section 32(2) of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and I find, on the balance of probabilities, that the accumulation of dust and mould in this case would be the Tenant's responsibility to remedy, not the Landlord's.

As a result, I dismiss without leave to reapply the Tenant's request to reduce rent for repairs, services or facilities agreed upon but not provided.

Request for repairs

Section 32(1) of the Act states that a landlord must provide and maintain a 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 a tenant.

Based on the testimony and evidence of the Tenant, I find that there is significant damage to the surface of the wall in the bathroom of the rental unit. I accept that this damage was not caused by the Tenant based on the Tenant's undisputed testimony that the damage was present when they occupied the rental unit. Considering that the location of the damage within the rental unit is in the wall of the shower and as such, water likely entered the hole, and that mould has started to grow in the cracks of the wall in the shower, I find on the balance of probabilities that the Landlord is in breach of their obligations set out in section 32(1) of the Act.

Given the above, I grant the Tenant's claim and I make the following order pursuant to section 62(3) of the Act:

- I ORDER the Landlord to have a qualified repair person attend and inspect the damage to the wall of the shower in the rental unit by no later than **four weeks** from the date of this Decision and that the necessary repairs are carried out no later than **eight weeks** from the date of this Decision.

Failing to comply with the Order may result in the Tenant applying for compensation under the Act.

As the Tenant has been partially successful in their Application, I find they are entitled to the reimbursement of the filing fee.

Conclusion

The Notice is canceled and is of no force or effect. The tenancy continues.

The Tenant's request to reduce rent is dismissed without leave to reapply.

The Tenant's request for an order of repairs is granted.

I order that the Tenant may make a **one-time deduction of \$100.00** from a future rent payment in satisfaction of the return of the 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 Act.

Dated: May 10, 2023

Residential Tenancy Branch