



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP FFT

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agents. Agent MM primarily spoke on behalf of the landlord (the "landlord").

As both parties were present service was confirmed. Each party testified that they had been served with the respective materials and based on the testimonies I find they were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to make emergency repairs to the rental unit?
Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in 1996. The rental unit is a suite in a multi-unit building. The current monthly rent is \$922.00.

There is another hearing scheduled to be heard on February 5, 2021 regarding applications from both the landlord, filed on November 18, 2020 and the tenant, filed on November 19, 2020. The later hearing includes a claim by the tenant seeking an order for repairs. The present expedited hearing was filed by the tenant on November 23, 2020 seeking emergency repairs be performed.

In their written submission the tenant writes:

there was a leak upstairs that they have not addressed. Last year the people upstairs caused a major clog resulting in my front yard being completely torn up. this is also a respond to an end of tenancy form I was given. the fire escape is dilapidated and a smoke alarm is constantly going off

The tenant repeated their submissions in their testimony and complained of plumbing issues, a fire escape they believed to be unsafe, various knobs that they claim are broken and the noise from a beeping smoke alarm in a neighboring suite. The tenant submitted one photograph into evidence showing some excavation work in a yard. The tenant testified that the issues remain outstanding and have existed for some time.

The landlord disputes that there are any outstanding issues requiring repairs. They said that all repairs and maintenance are performed in a timely and professional manner.

Analysis

Pursuant to Rule 10 of the Residential Tenancy Rules of Procedure and as elaborated in Policy Guideline 51 an application for an expedited hearing cannot be combined with other claims. Therefore, while I accept that there is another hearing scheduled which includes a claim for similar relief I am unable to combine and hear all matters together.

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities.

Section 33 of the *Act* describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and 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

In the present case the tenant complains of multiple issues, much of which I find to be outside the definition of emergency repairs. Issues like noise from a neighboring smoke

alarm or a knob on their stove are not emergency repairs as contemplated under the *Act*.

Furthermore, I find there is little evidence to support that the other issues the tenant raises are real, ongoing or require repairs. The tenant's submission consists of subjective complaints with little documentary materials in support. Their testimony is vague, lacking cogent details and are described in terms both hyperbolic and general such that they lack an air of reality. The tenant was unable to provide a coherent timeline of when these issues occurred or when they were raised with the landlord.

The landlord provided cogent, organized written submissions showing the history of repairs and maintenance work on the rental property and testified that there are no outstanding issues requiring further intervention.

Taken in its entirety I find the landlord to be a far more credible witness than the tenant. I find that the tenant has not met their evidentiary onus on a balance of probabilities to demonstrate that there are any issues requiring emergency repairs or repairs. Accordingly, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed 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: December 18, 2020

Residential Tenancy Branch