



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

The Tenant filed an Application for Dispute Resolution on February 22, 2022 seeking emergency repairs to the rental unit. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 22, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. The Landlord confirmed they received notice of this hearing, as well as the Tenant’s prepared documentary evidence. The Landlord did not submit documents for use as evidence in this hearing.

Issue to be Decided

Is the Landlord obligated by s. 32 of the *Act* to make emergency repairs to the rental unit as requested by the Tenant?

Background and Evidence

Both parties verified the basic details of the tenancy agreement at the start of the hearing. The Tenant pays \$2,800 per month for the tenancy that started on July 1, 2021.

The Tenant described the extant issue needing repair in the rental unit. This is the septic system that, as per their Application, “has been backing up weekly and overflowing into our yard since early September, 2021.” The Tenant here moved in to the rental unit when it was a new purchase for the Landlord.

Initially the Landlord told the Tenant the septic system was that belonging to the municipality. On August 31 the septic was overflowing in the backyard close to the house. Because of this, the Tenant determined they were on a separate system, not that of the city. They advised the Landlord of the overflow that was occurring a couple of feet from the backyard deck. They called a company to pump out the septic tank. This is generally a process that would take place once a year as the company advised.

After this, according to the Tenant the tank overflowed again in approximately 10 days. This has reoccurred probably 14 or 15 times, by the Tenant's estimate, up to the time of the hearing. Each time this occurs, they advise the Landlord, pay for the pumping process, and then wait for compensation from the Landlord.

The Tenant examined the issue further by calling specialist companies to inspect and advise on solutions. These companies advised the Tenant that the field is faulty and needs to be replaced – with a faulty field, the tank has nowhere to dry into. The Landlord visited one time and spoke with the septic tank company so was aware of the company. The Landlord's own plumber visited, and in October-November 2021 there was talk of getting a repair completed.

The Tenant found a couple of companies that can complete the replacement of the field. This is dependent on suitable weather. The Tenant was advised the process was a two-day job. The Tenant maintained it is a job that does not require the Tenant's family to move out from the rental unit for its completion.

In their evidence, the Tenant provided a timeline of events with reference to videos showing the overflow, pictures of the overflowing septic tank, emails to/from the Landlord on compensation for pumping and ongoing repairs. These messages are the Tenant's requests to the Landlord for repair. In their written timeline, the Tenant emphasized that they have spent a lot of their own time investigating the issue, and constantly having estimates completed, as well as ongoing calls for pumping. Additionally, they have paid the costs up front, manually ensured access to the lids. The issue leaves "raw sewage and odors for many months which is hazardous to their health and safety and the environment."

In the hearing, the Landlord stated they were not initially aware of the problem at the time the Tenant moved into the rental unit. This issue with the septic tank requiring constant pumping, as well as the field, is causing a significant problem for them as well. The Landlord is in the process of ending the tenancy for their own family use of the rental unit, and they plan on completing the necessary work when the tenancy is ended. They have not scheduled a firm to

complete the large job of field replacement. The Landlord's estimate, based on a discussion with a contractor, is that the job takes about one week.

The Tenant provided their estimates to the Landlord. They emphasize it is not a huge job and does not require vacancy of the property.

Analysis

The Act s. 33(2) sets out "emergency repairs" as a special category: those that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- major leaks in pipes or the roof;
- damaged or blocked water or sewer pipes or plumbing fixtures;
- the primary heating system;
- damaged or defective locks that give access to a rental unit; or
- the electrical systems.

I find it is undisputed that the sewage system in the yard behind the rental unit has been overflowing into the yard area. The Landlord has acknowledged the need for a field replacement. I find this meets the definition of an emergency repair, being the result of a block in the sewage system.

I find it necessary to make an order that the Landlord complete the necessary work of replacing the field in the septic system, with overflows because of tank contents having no where to go. This is necessary for the health and safety of the Tenant who currently occupies the rental unit. For the Landlord's own benefit, I find it is also necessary for the preservation of the rental unit.

I am not satisfied the Landlord requires the tenancy ended for this work to commence. The timing is of concern only insofar as I have here determined it is an urgent matter requiring repair. The maintenance and investigations by the Tenant are constant; I find this even represents an intrusion on their right to quiet enjoyment where the Landlord has not undertaken a significant repair since the start of this tenancy.

I order the Landlord to complete the scheduling of septic tank field replacement – the Landlord must have the replacement arrangements made within 5 days of receiving this decision. The wetter winter months have now ended, and the Landlord must ensure the work is completed

within one calendar month from receiving this decision. The Landlord is not permitted to end the tenancy or urge the Tenant to move elsewhere because of any difficulty associated with completing this task. I find the Tenant credible on the point that it is a relatively short-term job, and it does not require vacancy of the rental unit for its completion.

Conclusion

The Tenant's Application for emergency repairs is granted, as set out above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 25, 2022

Residential Tenancy Branch