



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP OLC RP

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on January 5, 2018, at 11:00 am. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the *Act*):

The tenants seek an order requiring the Landlord to:

- Comply with the *Act*, regulation or tenancy agreement (OLC)
- Make emergency repairs for health or safety reasons (ERP)
- Make repairs to the unit, site or property (RP)

Both Tenants as well as the Landlord's Agent (the Landlord) attended the hearing and provided affirmed testimony. All parties were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to an order requiring the Landlord to comply with the *Act*, regulation or tenancy agreement?
- Are the Tenants entitled to an order requiring the Landlord to make emergency repairs for health or safety reasons?

- Are the Tenants entitled to an order requiring the Landlord to make repairs to the unit, site or property?

Background and Evidence

The Tenants testified that they rent a house in a small mountain town which gets lots of snow. The house consists of a main floor, plus a basement, and was built around 1960. They stated that the basement is largely unfinished and the photos submitted indicate that the floors and walls down in the basement are mainly exposed concrete with some portions that have been painted.

The Tenants stated that there is a crack in the basement foundation wall which leaks water. They stated that in the fall of 2017, they saw a pool of water in the basement so they contacted the Landlord to let them know. The Tenants stated that a contractor came to look at the leak and suggested that the crack in the foundation wall could be repaired with pneumatic cement. The Tenants stated that after the contractor came, the Landlord emailed them to say that the repairs would not be completed. The Tenants stated that they are concerned that the basement will have a major leak in the spring, once the snow starts to melt.

The Landlord stated that they were not told about this leak in the basement until September of 2017. After the contractor visited, the Landlord stated that it was determined that a misdirected gutter outside was the issue, and had been since redirected.

The Tenants stated that the gutters were not redirected and they have little to do with the leak in the basement.

The Landlord stated that it was her understanding that the gutter had failed and that it was now fixed, which should resolve the issue. The Landlord stated that as a real estate agent, she is aware that it is very common with houses of this age, and location that they have small cracks in the foundation. She stated that the crack in the foundation is a hairline fracture, and is very small. She stated that the times they have been on site to show the house (it is listed for sale) it has been dry. The Landlord stated that they were again notified that there was a leak in November of 2017 via email. She stated that they requested to come and see the leak so they could ascertain the severity of it, however, the Tenants stated that they could not come over until a later date. The Tenants stated that the crack leaks consistently but slowly.

Both parties agree that the ground is currently frozen outside. The Tenants stated that it is not actively leaking at the moment, but they are concerned about water coming in again once the ground thaws. The Tenants referred to one of their photos which show a wet towel near the crack in the wall, and stated that sometimes the water leaks further, towards the furnace and that they have to use multiple towels.

The Landlord stated that despite being through the unit several times, she has not seen any water on the floor. The Landlord stated that they have only been informed of this leak since September of 2017, and they have not had enough of a chance to see it in order to determine what to do, and it does not appear to be as severe as the Tenants are alleging. Since it is not actively leaking because the ground is frozen, the Landlord stated that they cannot make a final determination as to what they need to do with the crack. The Landlord also feels the Tenants are making it hard for them to come and see the leak when it is active because when the Tenants reported it again in November of 2017, they would not let the Landlords come in to see it right away.

Analysis

After looking at the Tenants' submissions at the hearing, it is apparent that the main issue at hand is with respect to the crack in the basement foundation wall.

First, I turn to Section 33(1) of the Act, which defines "emergency repairs" as 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 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.

Based on the evidence before me, I find there is insufficient evidence to show that the leak, as presented, meets the definition of an "emergency repair". As such, I dismiss the Tenants' application to have the Landlord make emergency repairs for health or safety reasons.

Next, I turn to section 32 of the Act:

Landlord and tenant obligations to repair and maintain

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.

After considering the evidence before me, I note that both parties agree that there is a crack in the foundation wall. After looking at the photograph of the crack provided into evidence, it appears that the crack is relatively minor. It appears the Tenants' main concern is that the crack,

although not large, can leak a substantial amount of water once the ground starts to thaw in the spring. They also assert that it has leaked a significant amount of water in the past. However, they provided little documentary evidence to support this, other than a photo of a partially wet towel. The Landlord stated that it has been dry each time there has been a showing of the house in recent months.

I accept the Landlord's testimony that in her experience as a realtor in this area of the province, cracks in the foundation of this nature are very common, particularly in older houses with below grade basements.

I note that the Tenant has provided a photo of the crack with a wet towel. However, I note there is no further documentary evidence to show the leak is substantial, such that it warrants an order for the Landlord to repair it.

Furthermore, there is insufficient evidence to show that this crack in the foundation wall and any leak that occurred violates any health, safety and housing standards required by law. Although the basement may be used for some storage, I am mindful that the main part of the Tenants' habitable living space is on the main floor, not in the basement, and I am not satisfied that any leak, if and when it occurs, makes the residential property unsuitable for occupation, having factored in the age, character and location of the rental unit.

Conclusion

The Tenant's application is dismissed in full.

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: January 05, 2018

Residential Tenancy Branch