



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      ERP FFT

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make repairs or emergency repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

CH appeared for the tenants, while VF appeared for the landlords. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords provided the proper spelling of their name in the hearing. As neither party was opposed, the landlords' names were amended in the tenants' application.

The tenant testified that the landlords were personally served with their dispute resolution package and evidence December 24, 2019, and a second package was served on January 4, 2020, which included the page that was missed in the first package. The landlords confirmed receipt of the tenants' package, but not until January 4, 2020, and as a result did not have sufficient time to provide any written evidence for the hearing. The matter was discussed with both parties, and in the hearing, and as both parties wanted to proceed, the hearing proceeded to deal with the tenants' application.

### **Preliminary Issue: Settlement**

The tenant indicated at the beginning of the hearing that they had found a new place, and want to move. Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties

discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement as follows:

1. Both parties entered into a mutual agreement that this tenancy will end on February 29, 2020 at 4:00 p.m., by which date the tenants and any other occupants will have vacated the rental unit.
2. The landlords withdrew the 1 Month Notice dated December 10, 2019.
3. The parties agreed that this tenancy ends by way of their mutual agreement to end this tenancy and not on the basis of the landlords' 1 Month Notice, dated December 10, 2019.
4. Both parties agreed that the landlords would attend at the property on January 11, 2020 at 11:00 am to make any necessary repairs to the leaking roof in accordance with the *Act*.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

#### **Remaining Issue to be Decided**

Are the tenants entitled monetary compensation for emergency repairs made?

#### **Background and Evidence**

The tenants rent from a landlord a manufactured home for \$1,200.00 per month.

The tenants are seeking monetary compensation for emergency repairs they undertook in the amount of \$150.00. The tenants testified that that they had contacted the landlord about an electrical issue in the kitchen when the lights and fans were not working. The tenants testified that only the stove was working. It was undisputed by both parties that the tenants notified the landlords, who attended the property.

The landlords testified that they were able to fix the issue by resetting the breakers. The landlords testified that they felt the matter was resolved after attending to deal with the issue.

The tenants testified that the issue was not resolved, and called an electrician. The tenants testified that they submitted the receipt to the landlords for reimbursement, but the landlords refused.

#### **Analysis**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are

reproduced here. The principal aspects of this application and my findings around it are set out below

Section 33 of the *Act* states the following in regards to emergency repairs:

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system...
  - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

It was undisputed by both parties that the tenants experienced issues where the lights and fans were not working in the kitchen. The tenant testified that the stove was still working. It was also undisputed that the landlords had attended the home after the tenants had notified them. There is conflicting testimony as to whether the matter was resolved. The tenants provided a receipt in their evidentiary materials to show that they had hired their own electrician. The landlords testified that the issue was not urgent in nature, and that the issue was related to the breaker. I am not satisfied that the tenants had provided sufficient evidence to support that the home required emergency repairs as defined by section 33 of the *Act*. I am satisfied that the landlords had responded in a timely manner to carry out repairs, and therefore the tenants' application for reimbursement of the repairs is dismissed without leave to reapply.

I remind the landlords of their duty and obligation to perform repairs as required by section 32 of the *Act* as stated below:

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlords to repair and maintain a rental property:

**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.*

As the tenants were not successful with their claim, I dismiss their application for recovery of the filing fee without leave to reapply.

## **Conclusion**

The tenants' application for emergency repairs and recovery of the filing fee is dismissed with leave to reapply. The landlords are reminded of their obligation to repair and maintain property as set out in section 32 of the *Act*.

The landlord agreed to attend on the property at 11:00 a.m. on January 11, 2020 to make any necessary repairs as required by the *Act*.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue an Order of Possession to the landlord, which is to take effect by 4:00 p.m. on February 29, 2020.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenant(s) does not abide by condition #1 of the above settlement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords' 1 Month Notice, dated December 10, 2019, is cancelled and is of no force or effect.

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 10, 2020

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Residential Tenancy Branch