



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, ERP**

Introduction

This hearing dealt with an expedited application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out emergency repairs pursuant to section 33;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional forty-five minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant provided affirmed testimony that the tenant filed for dispute resolution on February 5, 2020 and the hearing was scheduled for today, March 5, 2020. The tenant testified the tenant served the landlord by posting the Notice of Hearing and Application for Dispute Resolution to the landlord's residential door on February 6, 2020. The tenant filed a signed and witnessed Proof of Service document in form RTB # 9 in support of service.

Under Rule 10 of the Rules of Procedure, the Director has ordered the methods of

service of an application for an expedited hearing. A party to an application for dispute resolution for a hearing date that is 17 days or later after the date of the application must serve their materials by the methods set out which include attaching the documents to the door at which the person resides.

I therefore find that the tenant has served the landlord with the Notice of Hearing and Application for Dispute Resolution as required by the Act.

Issue(s) to be Decided

Is the tenant entitled to:

- An order requiring the landlord to carry out emergency repairs pursuant to section 33;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant testified that the tenancy began in November 2014 and is ongoing. Rent is currently \$1,600.00 monthly. The unit is a house.

The tenant testified that the landlord has not met the obligation to keep the unit in good repair, despite her frequent entreaties to the landlord as evidenced by copies of many texts submitted as well as a letter.

The tenant was particularly concerned about the roof leaking which could cause moisture to leak into the attic, allow for the growth of mold, and affect the ceilings. The tenant testified that the landlord has temporarily fixed the roof and the leaking has stopped. However, the tenant testified she is concerned there is mold in the attic, and she has noticed black spots on the ceiling which she is afraid are mold. The tenant has not investigated the attic and submitted no evidence to support her claims of moisture or mold.

The tenant also stated the landlord had never serviced the furnace or hot water tank although they were functioning. The tenant requested an emergency order for servicing.

In summary, the tenant requested an order that the landlord inspect the attic and provide a report of a qualified person regarding the presence of mold and that the landlord service the furnace and hot water tank.

Analysis

The Act provides specific guidance on the procedure for emergency repairs. Section 33 describes “emergency repairs” as those repairs that are urgent, necessary for health or safety of anyone, or for the preservation or use of residential property and made for certain purposes such as repairing major leaks in pipes or the roof, damage or blocked water or sewer pipes or plumbing fixtures, and so on.

Section 33(1) states as follows:

- 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,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Policy Guideline 51 – Expedited Hearings sets out examples of emergency repairs, stating, in part:

Emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control.

Considering all the evidence submitted, the definitions in section 33 and guidance in the Policy Guideline, I find on a balance of probabilities that the tenant has not met the burden of proof to establish that the repairs she is requesting are “emergency repairs” within the above definition.

I find the tenant has failed to establish there were repairs which were urgent, necessary

for the health or safety of anyone or for the preservation or use of property and made for the purpose of repairing any of the specific items referenced in section 33.

I therefore dismiss the tenant's claim without leave to reapply.

I find that the tenant is unsuccessful with respect to all her claims and is therefore not entitled to reimbursement of the filing fee.

Conclusion

I dismiss the tenant's claims 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: March 05, 2020

Residential Tenancy Branch