



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WANKE DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

On May 31, 2020, the Tenant applied for dispute resolution under the Residential Tenancy Act (“the Act”) seeking the following relief:

- for an order that the Landlord make emergency repairs to the rental unit.

The Director of the Residential Tenancy Branch has established the expedited hearing process in circumstances where there is an imminent danger to the health, safety, or security of a Landlord or Tenant.

The matter was scheduled for a teleconference hearing. The Tenant and the Landlord were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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 to be Decided

- Is the Tenant entitled to an order for the Landlord to make emergency repairs to the rental unit or property?

Background and Evidence

The parties agreed that the tenancy began in September 2011 as a one-year fixed term tenancy that has continued thereafter on a month to month basis. Rent in the amount of \$1,704.60 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$800.00 and a pet damage deposit of \$400.00.

The Tenant is seeking an order that the Landlord repair the septic system at the residential property. The Tenant testified that the septic system has been leaking since 2016. She testified that her neighbor below has been complaining about the smell.

The Tenant testified that the Landlord had a person attend the property in April 2020 to look at the septic system. The person returned a week later and informed the Tenant that the septic system was being replaced in May 2020 and explained the process to the Tenant.

The Tenant testified that the work to repair the septic system has not started because the Landlord has asked her to remove a shed that the tenant built that is encumbering access to the septic field. She testified that the Landlord has asked her to remove the shed. The Tenant testified that she did not get permission from the Landlord prior to building the shed. The Tenant testified that she believed she had the right to do what she wanted to the property.

The Landlord testified that they are trying to make the repair the septic system; however, the Tenants shed is located on the septic field. The Landlord testified that they cannot go around the shed and are not interested in getting permission from neighboring properties to access the septic system from adjacent properties.

The Landlord testified that the Tenant was previously informed that she need permission from the Landlord prior to making changes to the property or building structures. The Landlord referred to a previous incident where the Tenant had to remove a pool that was set up on the septic field.

The Landlord needs the shed to be removed before the septic system repair can be made.

Analysis

Section 32 of the Act provides that 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.

Section 33 of the Act provides that “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.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the Landlord is not failing to maintain the residential property by refusing to have the septic system repaired. The Landlord arranged to have the septic system repaired; however, the work has been postponed due to an unauthorized structure that was built on the property by the Tenant.

With respect to making changes to a residential property, I find that a tenant must obtain consent of the landlord prior to making changes or building permanent structures. I find that the Tenant did not have permission from the Landlord to build the shed on the residential property.

I decline to issue an order that the Landlord make an emergency repair because the Landlord already has taken steps to repair the septic system and the delay is attributable to the Tenant.

The Tenant’s application for an order for the Landlord to make an emergency repair is dismissed.

The Landlord and Tenant agreed that the Tenant may have two weeks to remove the shed. The Tenant is cautioned that failure to move the shed may result in the Landlord taking action against the Tenant.

Conclusion

The Tenant's application for an order for the Landlord to make emergency repairs is dismissed in its entirety.

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: June 24, 2020

Residential Tenancy Branch