



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP, FFT

Introduction

In this dispute, the tenant seeks an order for emergency repairs pursuant to sections 33 and 62 of the *Residential Tenancy Act* (the “Act”), and recovery of the filing fee under section 72.

The tenant applied for dispute resolution on April 22, 2020 and a dispute resolution hearing was held, by way of telephone conference, on June 5, 2020. The landlord and the tenant both attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of evidence.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. Further, only relevant testimony has been included in this Decision.

It should be noted that, while the tenant requested \$922.00 in compensation in her application, she did not indicate that a monetary claim was, in fact, being made when she filed her application. Further, pursuant to *Residential Policy Guideline 51*, an application for an emergency repairs order cannot be combined with a claim for monetary compensation. As such, I will not consider whether the tenant is entitled to any compensation in this Decision. Should the tenant wish to seek compensation she remains at liberty to do so by way of separate application.

Issues to be Decided

1. Is the tenant entitled to an order for emergency repairs?
2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on October 1, 2015 and monthly rent is currently \$922.00. The rental unit is on the second floor of a multi-unit apartment building built in 1965.

The tenant testified that she has experienced, since March 2020, loud scratching sounds in the wall. Something like an animal that has gotten into the walls through a hole in the exterior of the building. The noises are such that she has been unable to use her bedroom, which is situated next to the wall in which the exterior hole existed. The noises are scratching noises, and despite the tenant using a white noise machine, they can still be heard. When she went outside the building, she observed a bird fly out of the hole. The hole has “been there a long time” and she contacted BC Hydro (on May 30) because she had safety concerns, as the hole is next to where power and communication lines enter the building.

The tenant seeks “an amicable solution here,” and simply wants to be able to use her bedroom. The noises are “quite traumatizing” and “disturbing.” She also fears for her safety due to the potential for fire. Further, she is also concerned about whatever animal is in the wall to enter her rental unit through the bathroom vent. In addition, the tenant had sought to have the landlord repair mold and caulking issues in the bathroom.

The landlord remarked, “I feel for [her] having to hear these sounds,” and indicated sympathy for the inconvenience they have caused the tenant. He went on to say that each time the tenant has complained about the noise issues that he has “reacted in a timely manner.” The landlord testified that the hole had opened up about ten years ago, but that it was patched up then. However, something (like an animal) must have opened it back up. He did not see any evidence of a bird nesting within the hole, however. He plugged up the hole again with stucco and the hole is now closed.

Eight days after the landlord received the tenant’s notice of dispute documentation, the tenant contacted the landlord about more scratching noises in the walls. After experiencing some difficulty in contacting an exterminator (most offices were closed because of COVID-19), they are now actively working on exterminating whatever it is that is causing the noises in the walls. They are also to come back next week to continue the extermination process.

The landlord testified that the hole was next to where the communication wires come in from the utility pole on the street, (they go through a communication mast) and the

power lines are not next to the hole. Finally, the landlord explained that he had already completed the caulking in the bathroom and that this issue was resolved.

Both parties spoke about condensation forming inside the unit. The tenant wanted it dealt with; the landlord said that this is a normal occurrence due to the steel mast (where the outside wires enter the building) drawing heat away from the building, resulting in cooler walls and the resulting condensation.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this dispute, the tenant seeks emergency repairs to address a suspected rodent problem (the rodents are in the walls causing the noises), a hole in the building that is next to hydro and communication wires, a moldy caulking issue, and to a lesser extent, condensation on the walls.

Section 33(1) of the Act covers the provision for emergency repairs and under what circumstances a repair may be considered an emergency. The section states:

(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.

Here, the rodent (or whatever animal may be inside the walls) problem does not, I find, fall within any of the above-noted categories of what may constitute an emergency repair. While the issue is urgent (and obviously unacceptable), and while it may be necessary to do something about the problem for health, safety, or to preserve the property, the “repair” does not fall into any of the items in section 33(1)(c). Without

Nor, it should be added, do repairs on moldy caulking in a bathroom fall into any of the section 33(1)(c) categories. Finally, while the hole was near where the power lines come into the building, the tenant has not provided any evidence that the electrical systems themselves have been compromised. The landlord testified that he has inspected the lines and that everything is fine.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their application for an order for emergency repairs under section 33 of the Act.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was unsuccessful in her application, I dismiss his claim for reimbursement of the filing fee.

Conclusion

I dismiss the tenant’s application 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 Act.

Dated: June 5, 2020

Residential Tenancy Branch