



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for an expedited hearing for an order for the landlord to make emergency repairs for health and safety reasons, and to recover the cost of the filing fee.

The tenants and three agents for the landlord (agents) attended the teleconference hearing and gave affirmed testimony. The tenants called into the hearing five minutes late. During the hearing the parties were affirmed and given the opportunity to provide testimony and present their documentary evidence. The evidence related to my findings are referred to below.

Neither party raised any concerns regarding the service of documentary evidence. As a result, I find the parties were sufficiently served under the Act.

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application for emergency repairs for health or safety reasons related to an electric access gate to the rental property (electric gate). I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request for emergency repairs for health or safety reasons related to the electric gate and the tenants' application to recover the cost of the filing fee at this proceeding. The balance of the tenants' application related to access to the electric gate shed (shed) and storage on the rental property I find is not related to emergency repairs under the Act and is dismissed, with leave to re-apply.

Preliminary and Procedural Matter

The parties confirmed their email addresses during the hearing. The parties were advised that the decision would be emailed to all parties.

Issues to be Decided

- Should the landlord be ordered to make emergency repairs for health or safety reasons?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on April 15, 2020. Monthly rent is \$3,800.00 per month and is due on the first day of each month.

The tenants allege that in May, the electric gate would not open and that they were prevented from leaving the property for 3 hours, until a landlord agent attended the residential property. The tenants write in their application that the tenant CF (tenant) is a heart attack survivor. The tenant stated that the only way for a vehicle to enter the rental property is through the electric gate and if it malfunctions, there is no way to leave or enter the rental property by vehicle. The tenant testified that they were unsure of when the electric gate malfunctioned; however, was able to recall the month of May. The tenant affirmed that when the electric gate failed to open, the tenants have a key for an override lock, which also failed and in addition, the mechanism to override the electric gate failed.

The tenant testified that at the start of the tenancy they opened the gate via a code entered at a panel, and eventually requested a remote and were supplied a remote by the landlord. The tenant also confirmed that in May the landlord provided a new key to the electric gate override.

Agent MB (agent) referred to an email from the gate technician (technician) in evidence, which supports that the gate technician found the gate in the opened position on May 15, 2020 when they were called to the property, and that the gate remains in the opened position when a specific code is entered, and will only close when that same code is re-entered.

Throughout the hearing, the tenant interrupted both the arbitrator and the agents many times. While the landlord agents were testifying, the tenant interrupted and asked if the agents had been affirmed, to which the tenant was advised that they were at the outset of the hearing, for which the tenant had missed the first five minutes by calling in late to the hearing. After a total of six interruptions, the tenant was formally cautioned to cease interrupting, or their application would be dismissed if the applicant was muted from the hearing for failing to comply with my directions to cease interrupting. At this point in the hearing, which was 26 minutes into the hearing, the tenant made the decision to hang up in frustration.

Before hanging up, the tenant stated that “it sounds like you have made up your mind” when the tenant was asked whether the electric gate is currently working. The landlord agents were advised that due to the applicant hanging up from the scheduled dispute resolution hearing, and pursuant to Rule 7.3 of the RTB Rules, which will be described below, the tenants’ application was dismissed without leave to reapply.

Analysis

Based on the documentary evidence presented, the testimony before me, and on the balance of probabilities, I find the following.

Firstly, RTB Rule 7.3 applies and states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As a result of the tenant hanging up and failing to attend the full length of the schedule dispute resolution hearing, the tenants’ application is dismissed without leave to reapply.

Secondly, I find based on the documentary evidence supplied by the landlord and the testimony of the parties, that as of the date of the hearing, the electric gate is functioning and that the tenants have received a new key for the lock override mechanism (override mechanism). I find the tenant was evasive with their answers throughout the hearing. Two examples were that, A. I should ask the respondents regarding the date of the electric gate issue, although I note that application was from the tenants and not the landlord, and B. The tenant could not recall if they were given a

new key and eventually admitted a new override mechanism key was provided by the landlord.

I am not satisfied, as the tenants hung up prior to answering direct questions regarding the override mechanism, that the tenants have provided sufficient evidence to support that the override mechanism is not functioning as of the date of the hearing. As the agents confirmed that the override mechanism is functioning, I find the tenants have provided insufficient evidence and as a result, I dismiss their application without leave to reapply, due to insufficient evidence.

As the tenants' application has been dismissed, I do not grant the filing fee.

Conclusion

The tenants' application for emergency repairs fails and is dismissed without leave to reapply, due to insufficient evidence.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 14, 2020

Residential Tenancy Branch