



Dispute Resolution Services

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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 that the landlord perform emergency repairs pursuant to section 33; and
- Authorization to recover their filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The tenant stated that they served the landlord with their notice of hearing and evidence by registered mail and provided a valid Canada Post tracking receipt as evidence. The landlord testified that received information regarding the hearing but disputed that they received the full notice of hearing or any evidence. I find that the tenant provided sufficient evidence of service. While the landlord disputed receiving the materials, they were aware of the tenant's claim and prepared to proceed and I find no undue prejudice or issues with procedural fairness, I find the landlord was sufficiently served with the tenant's materials in accordance with section 71 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to make emergency repairs?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy began in 2012. The current monthly rent is \$2,432.50 payable on the first of each month. The tenant submits that in March of 2020 snow fell off the roof of the rental property and damaged the back deck and stairs. The parties agree that repairs have been commenced and are ongoing.

The tenant testified that they take issues with the delay in commencing and completing repairs. The tenant submits in their written application that they “would like to have 25% compensation off of rent from March to July”.

Analysis

Pursuant to Residential Tenancy Rule of Procedure 6.2 a hearing is limited to matters claimed on the application.

In the present matter the tenants’ application is for an order for emergency repairs and recovery of filing fees. While they make a reference to seeking a monetary award in their written submissions, mentioning a desire for a monetary award is not an appropriate manner of adding a head of claim. I find that the tenant has not filed a valid application for a monetary claim and that adding a new head of claim without proper notice would be prejudicial to the respondent. Therefore, I decline to amend the tenants’ application to include a monetary claim.

Section 33 of the *Act* describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

I find that the nature of the deficiencies as described by the parties does not fall under the definition of emergency repairs as outlined above. The parties agree that the damaged access to the rental unit is a secondary entrance not intended for regular use.

In any event I accept the evidence of the parties that repair and maintenance work to the rental property has been commenced. As repairs have been commenced and the underlying deficiencies do not fall under the definition of emergency repairs I dismiss the tenants' application without leave to reapply.

As the tenants were not successful in their application they are not entitled to recover their filing fee.

Conclusion

I dismiss the tenants' application in its entirety 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: August 13, 2020

Residential Tenancy Branch