



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on August 24, 2020. The tenants seek an order requiring the Landlord to make emergency repairs for health or safety reasons, pursuant to the *Residential Tenancy Act* (the *Act*).

The Landlord and the Tenant both attended the hearing and provided testimony. All parties were given a full opportunity to be heard, to present evidence and to make submissions. The Tenant confirmed receipt of the Landlord's evidence package, which was posted to her door on August 19, 2020. No issue was raised with the service of that package.

Given this is an expedited hearing, I note the following Rule of Procedure:

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

[...]

10.6 Late evidence

If a piece of evidence is not available when the applicant or respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.

[...]

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

With respect to the Tenant's evidence, I note she provided photos of some "mould" and some text messages along with her application and notice of hearing package. The Tenant included the pictures and posted them, along with the Notice of Hearing/Application, to the Landlord's front door on August 11, 2020. The Landlord confirmed receipt of this package and did not take issue with the service of that package. I find this first package was the only package sufficiently served in accordance with the Rules of Procedure by the Tenant.

The Tenant kept dropping off more packages of evidence, almost daily for the next week or so. Rule 10.2 states that the applicant must submit all evidence they intend to rely at the same time they serve their application and Notice of Hearing.

The Tenant stated she has been busy with work, but did not provide any compelling explanation as to why she was unable to provide all of her evidence at the time she served her initial application. There is insufficient evidence to show any of this evidence is "new" or that it was not available, with some reasonable preparation, at the time she filed and served her initial application. I find the evidence submitted and served to the landlord after the first package is not admissible, as it was served late, in a manner that made it difficult for the landlord to respond to, and also because the Tenant has not sufficiently demonstrated that her subsequent evidence is "new and relevant".

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(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make emergency repairs for health or safety reasons?

Background and Evidence

The Tenant summarized the particulars of a couple different floods that have happened over the last couple years. More specifically, she stated that there was a flood on December 31, 2018, where the sewer backed up and flooded the separate rental unit in the basement of the house she lives in (she rents the upper floor). The Landlord stated that he called a plumber right away and he brought a camera and found the sewer line was blocked with toilet paper. The Landlord fixed the block and cleaned up the mess with vacuums and cleaners.

The Tenant identified a second flood on July 26, 2019, where a hose in the communal laundry room was leaking, and pooling near the walls and on the floor of the basement. The Landlord explained that this leak was the result of a slow drip from one of the supply hoses on the laundry sink. The Landlord stated that it was probably leaking for around a week or two by the time he heard about it, on July 26, 2019. The Landlord stated he went over immediately and fixed the leaky line. The Landlord also stated that he only found a cup or two of water, but he pulled out the drywall in the affected area just to be safe and to dry it properly.

The Tenant identified a more recent leak on July 30, 2020, where she says her fridge water supply line was leaking, and impacting her cabinets, and adjoining walls/floors. The Tenant stated that 2 days ago the Landlord replaced the fridge, and it no longer has a water supply line. The Landlord stated that he has replaced the fridge, so the issue should now be moot.

The Tenant stated she is no longer seeking repairs to any leaks in the house, but she is now concerned with the potential for mould in several areas of the house. The Tenant stated that there is potential mould in the laundry area, near the furnace, and in the kitchen, where the different leaks have been over the years. The Tenant denies that it is

from her air conditioner, although the Landlord feels this has contributed to the issues with water (since the air conditioner was dripping on the side of the house).

The Tenant stated that her father works for a restoration company, and he believed the mould needs to be cleaned up, and done so properly. He attended the hearing to support his daughter's application and her requests for proper cleanup. He also spoke to how he believed it was not the Tenant's air conditioner that caused the issues.

The Tenant stated that she had samples taken a few days ago and sent to the lab to check for mould in the areas she mentioned. The Tenant stated she does not have the results yet, and only believes it is mould based on appearance.

Analysis

A party that makes an application against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

First, I turn to Section 33(1) of the Act, which defines "emergency repairs" as 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 purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Based on the evidence before me, I find there is insufficient evidence to show that any of the current issues, as presented, meet the definition of an "emergency repair". There does not appear to be any "major" leaks in the pipes or the roof, that are ongoing. It appears the leaks have largely been dealt with and the Tenant's focus is now on making sure there is no residual mould in the house.

I find there is insufficient evidence of a major, active, ongoing leak in the pipes or the roof, or with the water, sewer or plumbing fixtures, currently. Further, the Tenant specifically stated in the hearing that she isn't seeking repairs to leaks at this point. Instead, she would like proper "Remediation" of the areas that had water, in the past.

I note this application is limited in that I am only able to consider what has been applied for, which is for “emergency repairs”. I do not find there is sufficient evidence that any emergency repairs are required to the above noted items. There is little, if any, evidence to prove an ongoing water leak, and the Tenant is now only seeking help with the mould issue. However, I do not find the alleged mould issue meets the emergency repair criteria. As such, I dismiss the Tenant’s application for emergency repairs, in full.

Conclusion

The Tenant’s application is dismissed in full.

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 24, 2020

Residential Tenancy Branch