



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order for emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant and an occupant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, occupant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served with this application for dispute resolution via registered mail on August 22, 2020. The tenant provided the tracking number for the above registered mailing which is located on the cover page of this decision. The Canada Post website confirmed the above mailing and states a successful delivery date of August 24, 2020. I find that the landlord was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to an Order for emergency repairs, pursuant to section 33 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant and the occupant, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began on April 1, 2006 and is currently ongoing. Monthly rent in the amount of \$1,945.00 is payable on the first day of each month. A security deposit of \$850.00 was paid by the tenant to the landlord. The subject rental property is a townhouse.

The tenant testified to the following facts:

- on New Years Eve 2019 the basement of the subject rental property flooded during heavy rains. The landlord was notified. The landlord told them that the flood was not important because no one uses the basement.
- The laundry room is in the basement and the basement is used by the tenant and occupants.
- In the next few months the basement flooded on two more occasions. The landlord sent a carpet cleaner to clean up the basement but there was too much water and the carpet cleaner could not clean it all up.
- The landlord provided the tenants with a shop vacuum and the tenant and occupant sucked up the water.
- The tenant rented dehumidifiers to dry the basement, but the drywall still molded.
- The landlord's maintenance people removed the moldy drywall but did not replace it, leaving only one sheet of drywall between the subject rental property and the neighbour's townhouse.
- The landlord told the tenant that due to COVID 19, no repairs would be made until July 2020. The landlord did not repair the property in July 2020.
- The tenant sent the landlord a letter requesting repairs be made to the subject rental property on August 6, 2020. The Canada Post receipt for same is in

evidence. The landlord did not repair the leak in the basement or the missing drywall.

The tenant entered into evidence photographs of the missing drywall and basement. The tenant testified that she is seeking the landlord to repair the leaking basement and to repair the drywall in the basement.

Analysis

Section 33(1) of the *Act* defines emergency repairs as follows:

- 33** (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.

I find that repairs to the basement to fix flooding is an emergency repair as defined by section 33 of the *Act*. I find that the basement water leak urgently requires repair as the tenant provided undisputed testimony that the basement in the subject rental property floods during heavy rains. Heavy fall and winter rains will start to fall in the near future. The summer is over. I find that repairs to the basement are necessary for the safety of the tenant and the preservation of the residential property as floods can cause extensive damage and lead to unhealthy mold growth if not properly remediated.

I find that, pursuant to sections 33(1)(i) and section 33(1)(vi), the basement requires emergency repairs.

I Order the landlord to repair the basement to prevent future flooding and to repair the drywall in the basement.

Section 32(1) of the *Act* states:

32 (1)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.

I find that the landlord breached section 32(2) of the *Act* by failing to repair the basement.

Section 65(1)(f) of the *Act* states:

65 (1)Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make any of the following orders:

(f)that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

I find that the tenants have lost the use of the basement, thereby reducing the value of the tenancy, due to the landlord's failure to maintain the subject rental property as set out in section 32 of the *Act*. I Order the tenant's future rent, starting October 1, 2020, will be reduced by \$300.00 per month until the ordered repairs are completed. If the repairs are completed mid month, for example, on November 18, 2020, the tenant's rent will return to its original rate on the next date rent is due. In this scenario, that would be on December 1, 2020.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

I Order the landlord to repair the basement to prevent future flooding.

I Order the landlord to repair the basement drywall.

I Order the tenant's rent to be reduced by \$300.00 per month, effective October 1, 2020, until the Ordered repairs are completed.

In addition to the above, the tenant is entitled to deduct \$100.00 on one occasion from rent due to the landlord.

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: September 21, 2020

Residential Tenancy Branch