



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order for emergency repairs, and to recover the cost of their filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant, B.S., was also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Should the Landlord be Ordered to complete Emergency Repairs?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 31, 2015, with a current monthly rent of \$779.47, due on the first day of each month, although the Tenant said he has been paying an even \$780.00 a month of his own choosing. The Parties agreed that the Tenant paid the Landlord a security deposit of \$380.00, and no pet damage deposit.

In the hearing, the Tenant said that in the recent past, the Landlord shut off the water to the residential property and forgot to turn it back on; however, the Landlord turned it back on, once reminded that it was off. However, the Tenant also said that on August 26, 2020, he came home to a note on his door saying that the water had been shut off again. The Tenant said that it has been off ever since. He said the Landlord has complained of leaks in the residential property, however, the Tenant is not aware of any leaks.

The Landlord said:

I have big problems here; the plumber said I need to replace the pipes. I asked him how much, and he said it's going to cost \$7,000.00.

In his written submission, the Landlord said that the plumber came on August 29, 2020, three days after the water was turned off. The Landlord said:

The tenant was advised by the plumber that it would take a while to complete the repairs and that he should look for another place to reside. It was now a health and safety issue.

In his written submission, the Tenant said:

He promised to put the washer and dryer back, but he never did. He also threatened to shut off the gas, so I couldn't use my oven. The plumber kept saying you can't live in these conditions. 3 or 4 times he said that.

When giving him the notice papers from the housing dispute, he slammed the

door on me. 'Why don't you go to housing and try getting another place?' I don't even know why he's doing what he's doing. We were getting along. Just to increase the rent.

The Landlord said:

I have a plumber coming on the Saturday at 12 o'clock. I showed him what is going on in the basement and [the Tenant] was right there. The plumber told me he was going to . . . these lines. He said I should change the pipes from copper to plastic. This was in the presence of [the Tenant]. He said to [the Tenant] you should move out because I can't get here for a week or week and a half. [The Tenant] never answered.

I asked [the Tenant] if he would allow the plumber to let him in to start cutting. He wouldn't go along with that. The plumber said that two houses from here, there's a lady with a suite vacant. I can ask her if you can move in there; he asked [the Tenant] three times and [the Tenant] never gave an answer. I asked [the Tenant] what are you going to do? I can't turn the water on. I showed him the gas line problem with the gas link rusting from the drips, and all the links he can see, and he denied all of that. I said [Tenant], can he cut the holes for the repair? The plumber told him several times it's a waste of time to do a simple repair for this; the problem is the broken line. When a friend went to put the toilet back on upstairs, it hit the pipe and we had a flood upstairs. I turned the water on, and it went into the wall. I asked [the Tenant] and the plumber if they could hear it. So, he knows there's a problem somewhere in the wall of the basement. The plumber made it quite clear, it's a waste of money to patch, because it's inside the wall and they don't know where.

The Tenant said:

Well for one thing, you have a thousand plumbers in the phone book – a couple weeks? Get someone else to do it, if he can't do it right away. They mentioned a suite a couple doors down. I don't know much about that. Why is it taking so long to fix? They haven't even started on that. There's a problem in the bathroom upstairs? That tells me they just want me to move out. The plumber came on the 29th. He just came to look at my toilet. I can't do anything right now with the water turned off.

In answer to my question of why the Landlord has not called another plumber, he said:

It's not easy to find people to do the most simple things. There's a lot of work to go on out there. Everyone I hire wants cash, and lots of cash. I trust this plumber. I said I want the work done as soon as possible. If he could bring a guy in to cut holes where he wants them first.... That's when he told [the Tenant] three times: 'I will ask for you there to rent you another suite', and [the Tenant] refused. I tried to tell him that you should rent a hotel when I turned the water off.

Yes, I did say that to him when I first realized the problem. You can't stay here without water, and told him about a hotel. I'll give you some money for that. He refused that. Then we got water [elsewhere]. He said: 'I just need some water for coffee and the shower before work'. I told him I can't turn the water on, because it's all going to go into the wall. I said, 'Let's go next door to get some water.' I did get him two pales; I went along with him and all he brought was quart bottles. I asked him why, and he said this is all I need. I realized that [the neighbour] wasn't there, but I filled these two bottles. I said what if you have to go in the bathroom in the night?

It smelled, it stinked. There was a pail of poop that he had in the pail. It stunk up the whole house. He went and put it under the deck, and he didn't cover it. I offered to have him at a hotel. The plumber said he should live next door. How much power. . .

When again I asked the Landlord how many plumbers he had called to get the job done as soon as possible, he said: "Just this one plumber, because I trust him." He could not say with any certainty when his plumber was going to attend the residential property to fix the problem and turn the water back on.

The Tenant said: "I did say they can come in. I don't like . . . but there's no water problems in the house. I want it to be finished. They can come in when I'm at work and that's fine."

The Landlord said:

[The Tenant] is not telling the truth. It was him, the plumber, and me. I asked [the Tenant] in the presence of the plumber, if he would allow me to give the plumber the key to his place. The plumber never said a week and a week and a half.

I'll give [the Tenant] the plumber's number, and ask him about the conversation that went on with the three of us. I would invite you to do that. [The Tenant] is

lying and is changing his story.

The Tenant said:

I want another plumber and another opinion. I think he's just trying to evict me. I don't see any leak; it'll start coming through the gyprock in the ceiling, if it's in the walls.

I think the credibility is nil, because they know each other. I want someone who doesn't know [the Landlord] or doesn't know me. It's going to cost the same amount of money. If he had objections, then he's hiding something.

He's saying that he's broke, but he owns six homes in the greater Vancouver area. This is like what you pay rent for - to get water and electricity. It's hard to live without water; it's a necessity, and he should have got on it two weeks ago. There are a thousand plumbers in the phone book.

The Landlord said:

I've said all along . . . what he's saying I don't go along with that. It's not his business how many houses I have. I think with that plumber it was a perfect situation. The plumber said he'd bring a guy to do it. I didn't take any rent from him, I told him to go find a place. I need a new water line fixed and the gas line fixed, and when he has a secure place to live . . .

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 33 of the Act sets out what "emergency repairs" means. It says that emergency repairs are "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property." The Act also states that emergency repairs are 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.

[emphasis added]

Landlords' and tenants' rights and obligations for repairs are set out in sections 32 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

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.**

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[emphasis added]

Section 65 of the Act states that if the Director finds that a landlord or tenant has not complied with the Act, the regulation or a tenancy agreement, the Director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy.

I find that the repair of the water supply is necessary to make the rental unit suitable for occupation by the Tenant. I find that the Landlord was aware of the absence of water in the rental unit on August 26, 2020. I find that the Landlord has had a week and a half to find someone and develop a plan to repair the problem and have the water turned back on. I find that the Landlord does not have a plan to remedy the problem with his current

plumber. I find that the Landlord has been unreasonable in relying on one plumber, rather than making calls to other plumbers to find someone who can get on the job right away. I find that the Landlord has breached section 32(1) of the Act.

The following evidence raises questions in my mind about the reliability and credibility of the Landlord's evidence, position, and motives:

- He acknowledges the seriousness of restricting water to the rental unit, but he will only use one plumber who he knows – he has called no one else to compare price and availability;
- The Landlord and his plumber keep encouraging the Tenant to move out – why is it any of the plumber's concern, unless he is acting on the Landlord's instruction and behalf?
- The Tenant is the last tenant in the building; and
- I have not been directed to any evidence before me, which is directly from the plumber setting out problems with the plumbing fixtures in the building.

I find the Tenant's unwillingness to take advantage of the Landlord's offer of compensation for a hotel, while the water is off, reveals the Tenant's concern about ever getting back into the rental unit.

I find on a balance of probabilities that the Landlord is not behaving in good faith in this matter, and that he just wants the Tenant to move out. In order to prove me wrong and remedy the problem as soon as possible, I **Order** the Landlord at his own cost to:

1. Turn the water back on in the residential property immediately and leave it on, **or**
2. Find a new plumber:
 - a. Who is a certified, licensed professional;
 - b. Who is previously unknown to the Landlord and the Tenant;
 - c. Who will attend to inspect the problem within a day of the Landlord's call;
 - d. Who will inspect the plumbing in the residential property and provide the Landlord with an objective report on the condition of the pipes in the residential property; and
 - e. Who will give the Landlord an estimate on the timing and cost of a repair; and
 - f. If recommended by the new objective plumber, who will get the job done and the water turned back on in the residential property **by September**

30, 2020; and

- g.** That the Landlord will accompany the new plumber to the rental unit, rather than giving him a key to the rental unit.
- 3.** Supply the Tenant with two 5-gallon or more bottles of water once a week from a reputable water supplier, including a spout for easy access to the water, until the water in the building is turned back on permanently; and
- 4.** To accept no rent from the Tenant until the water is turned back on. If this happens early in the month, the Tenant is must pay full rent on the next date that rent is usually due and owing, pursuant to section 65 of the Act.

If this matter is not resolved by **October 16, 2020**, the Tenant may apply for further relief at the RTB regarding resolution and compensation from the Landlord.

As the Tenant is successful in this Application, I award him with recovery of the \$100.00 Application filing fee. The Tenant is authorized to decrease one upcoming rental payment after this matter is resolved by \$100.00 in satisfaction of this award.

Conclusion

The Tenant is successful in his Application for emergency repairs. The Landlord breached section 32(1)(a) of the Act by not taking sufficient action to remedy the water supply problem in the residential property, as soon as possible. The Landlord is Ordered to turn the water supply back on immediately or to carry out steps 2 through 4 of the above noted list immediately.

The Tenant is also awarded recovery of the \$100.00 Application filing fee and is authorized to deduct \$100.00 from one upcoming rental payment to satisfy this award.

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 09, 2020

Residential Tenancy Branch