



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This expedited hearing dealt with the tenant's application pursuant to section 33 of the *Residential Tenancy Act* (the "Act") for an order that the landlord perform emergency repairs.

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. The tenant was assisted by an advocate.

As both parties were present service was confirmed. The landlord testified that they were in receipt of the tenant's materials and had not served any materials of their own. Based on the testimonies I find the landlord duly served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to make emergency repairs to the rental unit?

Background and Evidence

This fixed-term tenancy originally began in March, 2020. The monthly rent is \$750.00 payable on the first of each month. The rental unit is a basement suite in a detached home.

There was a previous hearing under the file number on the first page of this decision. That hearing, conducted on August 11, 2020 dealt with the tenant's application including seeking an order requiring the landlord to complete repairs to the rental unit. The earlier

hearing conclude by way of a settlement agreement between the parties. The terms of the settlement include the following agreement:

- The tenant agreed to immediately advise the landlords of any repairs that need to be completed at the rental unit, for the remainder of this tenancy

The tenant filed their present application on August 27, 2020 seeking an order for emergency repairs. The tenant submits that throughout the tenancy they have raised the issue of rainwater leaking into the rental unit on multiple occasions and the landlord has failed to make repairs. The tenant testified that since the hearing of August 11, 2020 they have not advised the landlord of the need for any repairs. The tenant said that the leaks are an ongoing issue, recurring each time that it rains, but has been averted since the earlier hearing.

Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. The earlier hearing dealt with the tenant's application including an order for repairs to be made to the rental unit. The earlier hearing concluded by way of a settlement agreement which is noted as the "full and final settlement of all aspects of [the] dispute for both parties".

I therefore find that the issue of repairs to the rental unit was conclusively decided in the August 11, 2020 hearing and I do not have the jurisdiction to make a new finding on the issue of repairs. I limit my findings to the request for emergency repairs arising from the date of the earlier hearing, August 11, 2020.

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

Based on the evidence of the tenant and the description of the issues, I find that the repairs requested by the tenant does not fall under the definition of emergency repairs

as outlined above. I do not find that some water ingress due to rainfall to be an issue requiring urgent repairs for the health and safety of anyone. Based on the photographic evidence submitted the leaks may be inconvenient but I do not find that they are so major that it impacts the use of the residential property or poses a threat to health and safety.

I further accept the testimony of the tenant that they were able to prevent water ingress during the last rainfall and there has been no incidents since the date of the previous hearing nor have they advised the landlord of the need for repairs since that date.

Based on the totality of the materials before me I find insufficient evidence that there is an urgent need for repairs for the purposes identified above. As such, I find the tenant has not met their evidentiary burden and dismiss the present application.

Conclusion

The tenant's application is dismissed 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: September 24, 2020

Residential Tenancy Branch