



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, made on October 31, 2020 (the "Application"). The Tenant has applied for an expedited hearing seeking an order for emergency repairs and the return of the filing fee, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant, the Landlord, and the Landlord's Counsel C.S. attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenant's Application package, however, the Landlord stated that she only received the Tenant's evidence package on November 23, 2020, one day before the hearing. The Tenant acknowledge that he served his documentary evidence late to the Landlord. The Landlord stated that she had not yet had to time to review, consider, and respond to all the Tenant's documentary evidence.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedures (the "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.

According to the Rule of Procedure 10.3 Serving the notice of dispute resolution proceeding package;

The applicant must, **within one day** of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- **evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [*Applicant's Evidence Relating to an Expedited Hearing*].**

I accept that the parties agreed during the hearing that the Tenant served the Landlord on November 23, 2020, one day before the hearing. I accept that the Landlord had insufficient time to consider, prepare and to respond to the Tenant's documentary evidence, which was provided late, contrary to the Rules of Procedure. As such, I find that the Tenant's documentary evidence will not be considered during the hearing. The hearing continued based on the oral testimony from both parties.

Issue(s) to be Decided

1. Is the Tenant entitled to an order for the Landlord to make emergency repairs to the rental unit, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy started on March 20, 2020. Currently, the Tenant is required to pay rent in the amount of \$2,100.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,050.00 and a pet damage deposit in the amount of \$400.00 to the Landlord. The Tenant continues to occupy the rental unit.

The Tenant stated that he has had no hot water in the rental unit since October 24, 2020. The Tenant stated that he notified the Landlord about the hot water issue, however, the Landlord has not yet taken action to resolve the issue. Currently the Tenant has not hot water in the rental unit

The Tenant stated that on October 31, 2020 the power went out at the rental unit aside from one electrical outlet. The Tenant stated that he once again notified the Landlord

regarding the issue, however, the Tenant continues to only have use of one electrical outlet in the rental unit. The Tenant stated that he suspects that the Landlord has purposely turned off the electricity to the rental unit. As such, the Tenant has applied for emergency repairs to be completed to restore the hot water and the electricity in the rental unit.

In response, the Landlord confirmed that the Tenant notified her regarding the hot water issue on October 24, 2020 and electrical issues on October 31, 2020. The Landlord stated that she made arrangements for an electrician to attend the rental unit on November 5, 2020 at which point it was determined that there were no issues.

The Landlord stated that she has not yet attended the rental unit to determine if the hot water and electrical issues persist even though the Tenant has indicated that these issues continue to be a problem. The Landlord indicated that the Tenant has not paid rent, therefore, she is unable to afford to continually send trades person to the rental unit.

During the hearing, the Landlord agreed to retain the services of a licensed electrician to inspect, assess and where work is required to repair the rental unit to a state whereby the electricity is fully restored to the rental unit as soon as possible but to be completed no later than November 27, 2020.

In relation to the hot water, the Landlord argued that hot water is not included in the tenancy agreement between the parties. Furthermore, the repair of the hot water tank does not constitute an emergency repair. During the hearing, the parties agreed that the Tenant had hot water during the entire tenancy up until October 24, 2020.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 32 of the *Act*,

(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...

(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...

Section 33 of the Act states; "**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**, ...*

In this case, I accept that the Tenant has experienced a loss of electricity to the rental unit, aside from one outlet. I accept that the Landlord agreed to retain the services of a licensed electrician to inspect, assess and where work is required to repair the rental unit to a state whereby the electricity is fully restored to the rental unit as soon as possible but to be completed no later than November 27, 2020.

The Landlord did not agree to repair the hot water issue. I find that the repair of the hot water issue does not constitute an emergency repair. It may be that the Landlord's repair of the electrician system will also resolve the hot water issues. However, if not, the Tenant is at liberty to reapply for an order that the Landlord make regular repairs to resolve the hot water issue, as well as for monetary compensation relating to a loss of value in the tenancy as a result of not having hot water since October 24, 2020.

I further find that the Tenant is entitled to recover the **\$100.00** filing fee paid to make the Application, which may be deducted from one (1) future rent payment.

Conclusion

The Landlord has agreed to retain the services of a licensed electrician to inspect, assess and where work is required to repair the rental unit to a state whereby the electricity is fully restored to the rental unit as soon as possible but to be completed no later than November 27, 2020.

The Tenant is permitted to deduct \$100.00 from one (1) future rent payment which represents the return of the filing fee.

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: November 25, 2020

Residential Tenancy Branch