



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. Neither party submitted written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to any orders for the landlord to perform emergency repairs?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on March 17, 2020, with monthly rent currently set at \$900.00, payable on the first of the month. The tenant testified that this was a 1 year fixed-term tenancy, while the landlord testified that it was a month-to-month tenancy. The landlord collected a security deposit in the amount of \$450.00 for this tenancy, which they still hold.

The tenant testified that he had filed this application as the landlord has failed to perform repairs despite his requests and concerns. The tenant testified that there are several holes in the suite, which have caused leaks into his rental unit and mould. The tenant testified that sink in the kitchen would back up, resulting in a sewage smell. The tenant testified that instead of performing repairs, the landlord has tried to end this tenancy instead.

The landlord responded that they had repaired the sink within the last 30 days, and that there are no outstanding issues that need to be addressed. The landlord testified that the tenant had created the holes himself, and that there are no leaks. The landlord testified that they had dispatched contractors, who have confirmed that no repairs remain outstanding.

Analysis

Section 32 of the *Act* reads in part as follows:

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...

(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 the following in regards to emergency repairs:

Emergency repairs

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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, damaged plumbing fixtures or major leaks in pipes may be considered emergency repairs. However, it is disputed by both parties as to whether the landlord has maintained the premises in accordance with section 32 of the *Act*, and whether the tenant caused the damage himself. In light of the conflicting testimony, I find that the tenant has not met the burden of proof to support that the landlord has failed to perform repairs as is required by the *Act*. I note that despite the tenant's concerns about the ongoing issues and condition of the rental unit, the tenant failed to provide sufficient evidence, whether that be in the form of photos, witness testimony or statements, invoices, or reports, to support that emergency repairs are required. Accordingly, I dismiss the tenant's application with leave to reapply.

Conclusion

The tenant's application for emergency repairs is dismissed with 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: December 7, 2020

Residential Tenancy Branch