



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 29, 2021. The Tenant applied for an expedited hearing to have the Landlord make emergency repairs to the rental unit, pursuant to section 33 of the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence and did not take issue with the service of those documents approximately 2 weeks ago.

The Landlord explained that she sent her evidence to the Tenant via email. However, the Tenant denies getting this email. The Landlord did not serve her documents or files in any other manner. As stated in the hearing, the Landlord has failed to serve her evidence in accordance with section 88 of the Act. There is insufficient evidence to show the Landlord served the Tenant with her evidence in a verifiable way. I do not find email is sufficient. As the Landlord was unable to demonstrate she served her evidence in accordance with the Act, I find it is not admissible. The Landlord relied on oral testimony only.

As part of the Tenant's evidence package, he included a link to files he uploaded to a third-party website for me to view. The Tenant stated he did not upload them to our dispute access site. As stated in the hearing, the Tenant is required to submit copies of all evidence directly to our office, and I am unable to visit third party download sites to obtain copies of evidence the Tenant intends to rely upon. The onus is on the Tenant to upload evidence in an acceptable format, in accordance with the Rules of Procedure.

Given the Tenant did not upload his videos to our website, and he only put them on the third-party download site, I find they have not been submitted in accordance with the Rules of Procedure. I find these videos are not admissible, and I will only consider the paper evidence package provided by the Tenant (photos and text), as this is what was served properly to the tenancy branch, and the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make emergency repairs?

Background and Evidence

The Tenant testified that he has lived in the unit since around March of 2020, and the rental unit is in need of significant repairs and upgrades. The Tenant explained that when he moved in, there were several holes cut in the ceilings, showing exposed pipes, and spots on the walls and ceilings where there was evidence of water damage and poor construction.

The Tenant was asked to explain what the current issues are that warrant his application for emergency repairs. Although the Tenant provided some photos of different issues with the rental unit, the only issues he identified that he currently wants fixed are relating to:

- 1) A leak in the ceiling above his kitchen sink
- 2) His kitchen sink backs up sporadically independent of his use

The Tenant explained that there is an area directly above his kitchen where the drywall is removed, and there is an exposed plumbing drainpipe. The Tenant stated that it has been open since he moved in, and initially he thought there was a leak in the pipe. However, now he is concerned that there may be a leak from the wall or floor above, which leaks through the floor. The Tenant stated this particular area will drip occasionally on him while he is using the sink. The Tenant is concerned about mold and

about his loss of use of that area. The Tenant wants the Landlord to fix whatever the leak is.

The Tenant also mentioned that his kitchen sink backs up, intermittently, and it seems to back up with foamy/dirty water when he is not even using it. The Tenant stated that the sink seems to drain okay when he is using it. The Tenant believes the cause is a block in the drain line, which causes a backup in his kitchen sink when the Tenants upstairs use their plumbing.

The Landlord explained that the Tenant has completely exaggerated this issue, and although there are some holes in the ceiling, there are no active leaks. The Landlord stated that they had a licenced plumber attend the rental unit on November 25, 2020, and he inspected the pipes in the area above the sink, and he found no evidence of ongoing water leaks. The Landlord stated that since the dripping was sporadic, it is unlikely to be from the plumbing pipes, as per the plumber's advice. The Landlord stated that they have been unable to verify that there is a leak where the Tenant is claiming, but they had a plumber come anyways to investigate.

The Landlord stated that on November 25, 2020, they also had the plumber use his drain snake, to fix the issue the Tenant was complaining about, and to upgrade his faucet. The Landlord stated they don't even know if the Tenant's claims are accurate, but they brought a plumber in to check for leaks, and to a drain snake just to be sure. The Tenant asserts the issue is still happening, even since the plumber came.

The Landlord stated that they again had the plumber back a couple of days before the hearing, and he inspected both the alleged ceiling leak, and the Tenant's complaint about his kitchen sink backing up. The Landlord stated that they had the plumber attempt to drain large volumes of water from the upper unit, in an attempt to replicate the drain issue the Tenant is complaining about in his kitchen sink. However, they could not replicate it, nor could they see what the issue was. The Tenant would like a larger drain snake to be brought it. However, the Landlord stated there is no evidence that this issue even exists, and the plumber has been unable to find a problem for either the alleged ceiling drip, or the kitchen backup, despite multiple visits.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings.

The onus is on the Tenant to demonstrate the emergency repairs are required.

First, I turn to Section 33(1) of the Act, which defines "emergency repairs" as 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 purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

I have considered the Tenant's statements and evidence on this matter. I find it important to note that the Tenant provided no admissible video evidence of the kitchen sink issue, or the dripping ceiling. The Tenant only provided a couple a small photos of different issues with the ceiling, and other issues he has with the overall construction of the house. Some of the photos demonstrate that, in the past, the ceiling has been opened up in places to explore potential leaks. However, there is no documentary evidence showing an active and major leak in the pipes, plumbing, or the roof. There is also no supporting documentary evidence showing supporting the alleged sink backup issue. No photos of active water events were provided, and there is no admissible video evidence supporting the alleged issues with either the drip in the ceiling or the kitchen sink backing up.

I note the undisputed evidence is that the Landlord has had a tradesperson come to look at a few different potential plumbing issues, on at least 2 occasions. The Landlord denies that any issue was found, but they snaked the drains regardless and had the pipes inspected and tested.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the onus is on the Tenant to establish that there are issues with the rental unit that meet the criteria noted under section 33 of the Act, as laid out above. I find the

Tenant has provided insufficient evidence of an active, ongoing major leak to the pipes of the roof. Further, there is insufficient evidence that there is a damaged or blocked water or sewer system or plumbing fixture. I do not find the Tenant's general photos of disrepair combined with his disputed allegations of issues are sufficient to demonstrate that the Landlord should be ordered to make emergency repairs pursuant to section 33 of the Act.

Conclusion

The Tenant's application for emergency repairs, 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: January 29, 2021

Residential Tenancy Branch