



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP FFT

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;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord attended the hearing with their legal counsel. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's' evidentiary materials.

Tenant's Other Claims

Under Rule 10 of the RTB Rules of Procedure, the director may set an application for dispute resolution down for an expedited hearing meaning it will be heard on short notice to the respondent. As stated in Policy Guideline #51, attempts to amend the application or add additional claims are not permitted.

"If the application is scheduled as an expedited hearing (see 'Scheduling an Expedited Hearing' below), an attempt to amend an expedited hearing application from a request for emergency repairs to regular repairs or from an early end to tenancy to a request for an order of possession for unpaid rent will almost always result in the arbitrator

dismissing the application and the applicant having to start the application process over from the beginning.”

In addition to the tenant's expedited application for emergency repairs, the tenant referenced other issues in this tenancy. As stated in Residential Policy Guideline #51 about Expedited Hearings “an application for an expedited hearing cannot be combined with another claim.” However, pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties agreed to the following binding agreement in relation to the landlord's right to enter the tenant's rental unit.

1. The landlord agrees to not enter the tenant's rental unit for the duration of this tenancy for any reason whatsoever. In the event that entry is required, as allowed under the *Act* and legislation, the landlord may send an agent or contractor to attend for the purpose of dealing with those matters.
2. As the unit is for sale, the tenant will allow potential buyers to view the rental unit in the company of their agents on the condition that proper notice is given in accordance with the *Act* and applicable legislation.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

The hearing proceeded to deal with the tenant's application for emergency repairs.

Issues to be Decided

Is the tenant entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties entered into tenancy agreement to commenced on March 1, 2020, with monthly rent set at \$1,200.00, payable on the first of the month. The tenant was given possession as of February 14, 2020. A security deposit in the amount of \$600.00 was collected for this tenancy.

The tenant filed an application for emergency repairs to the door of rental unit, citing personal safety. The tenant described an incident that took place in his home on January 2, 2021, as well as other interactions with the landlord, that has caused him to be fearful. The tenant testified that there was forced entry to the home, and the door jamb and lock remain damaged. The tenant requests that repairs be undertaken to the door jamb and lock as he feels that the lock is not in good working order. The tenant also requested in his application for the locks to be changed. The tenant submitted photos of the door jamb and the state of the rental unit following the incident on January 2, 2021 in support of his claim. The tenant also requested the recovery of the filing fee for this application.

The landlord disputes the tenant's allegations and claim, and states that the door is in perfectly good working order, and that no emergency repairs are required. The landlord denies attacking the tenant, or any forced entry into the tenant's rental unit. The landlord submits that the photos only show wear and tear, and that there is no damage.

Analysis

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.

(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...

(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)...

(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 or defective locks that give access to a rental unit may be considered an emergency repair. The tenant maintains that the door jamb and lock are damaged, and do not provide him adequate security. The tenant also emphasized the urgency of the matter considering the past events that have taken place.

In review of the evidence and testimony before me, I am not satisfied that emergency repairs are required under section 33 of the *Act*. Although I acknowledge the tenant's concerns about his personal safety, I do not find the evidence supports that the door or lock is damaged or defective beyond regular wear and tear, or that emergency repairs are required to provide him adequate safety. I find that the tenant is still able to close and lock the door. Furthermore, although I note the tenant's concern for his personal safety and unauthorized entry, I find that this issue has been addressed by the conditions of the mutual agreement as noted above. Accordingly, I dismiss the tenant's application for emergency repairs without leave to reapply.

I note that although this hearing was set on an expedited basis to strictly deal with an application for emergency repairs, which was dismissed, the landlord is still bound by the *Act* and tenancy agreement to repair and maintain the rental unit in accordance with the *Act*. In consideration of the reference to wear and tear, I remind the landlord of the following obligations.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in his application for emergency repairs, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

I order that both parties comply with the terms of the agreement confirmed in the hearing and as noted in this decision.

The remainder of 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: January 29, 2021

Residential Tenancy Branch