



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 by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 07, 2021 (the “Application”). The Tenant applied for an order that the Landlord make emergency repairs for health or safety reasons.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with Legal Counsel. I explained the hearing process to the parties who did not have questions when asked. The Tenant and Landlord provided affirmed testimony.

The Application included two additional tenants which are the Tenant’s children. I removed the two additional tenants from the Application as children should not be named on the Application.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package and Tenant’s evidence. Legal Counsel advised that some evidence was received late and sought exclusion of this evidence. The relevant evidence received late included:

- A document about a February 19, 2021 conversation between the parties.
- Documents labelled “timeline...” and “submission...” as well as the evidence referred to in these.
- Photos 1A to 8D.

Legal Counsel made the following submissions about the late evidence. This is an expedited hearing and the evidence had to be served with the Application. The evidence is dated prior to the Application date and therefore was available at the time

the Application was made. The evidence was received yesterday, and the Landlord and Legal Counsel have not had time to review or discuss it.

The Tenant made the following submissions about the late evidence. The evidence was delivered on the second. The Tenant thought the service met the deadline which is two days before the hearing. The evidence was sent on the twenty-seventh. Tracking Number 1 relates to the evidence package. The evidence was not served with the Application because it is a response to the Landlord's evidence.

The Tenant confirmed receipt of the Landlord's evidence.

I have looked Tracking Number 1 up on the Canada Post website which shows the evidence package was sent February 27, 2021, a notice card was left March 02, 2021 and the package was delivered March 03, 2021.

This was an expedited hearing. The relevant Rules of Procedure (the "Rules") state:

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.

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].

10.6 Late evidence

If a piece of evidence is not available when the applicant or respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8...

Pursuant to rule 10.3 of the Rules, the Tenant had until February 09, 2021 to serve their evidence on the Landlord. The evidence was sent February 27, 2021 and therefore the Tenant failed to comply with rule 10.3 of the Rules.

I am not satisfied the late evidence, other than the document about a February 19, 2021 conversation, is new evidence because the Tenant did not submit that it was new evidence. I am satisfied the late evidence, other than the document about a February 19, 2021 conversation, should be excluded as I am satisfied it would be unfair to the Landlord to consider it when the Landlord received it the day before the hearing and did not have time to review it or discuss it with Legal Counsel. I admit the document about a February 19, 2021 conversation given it was not available on February 09, 2021.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the admissible documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord make emergency repairs?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started September 01, 2020.

The Tenant confirmed that the issue is mold in the rental unit and stated that they want an order that someone attend the rental unit to do a mold inspection due to visible mold in the rental unit.

The Tenant testified as follows. There is mold in the rental unit including around the window frames, in the flooring, in the top corner of the bedroom, at the bottom of the baseboard and in the attic. The mold started from water leaking into the rental unit through the window frame and patio door frame. The mold has spread to the bed in one of the bedrooms. The mold has affected the health of the Tenant and their children. The Tenant is extremely sick and has been to the doctor. The Tenant's children are sick.

I read the Tenant the definition of "emergency repairs" in section 33 of the *Act* and asked the Tenant how the request meets the criteria listed. The Tenant testified that the roof of the rental unit was leaking. I asked the Tenant if the roof is still leaking and the Tenant testified that there has not been any rain to determine whether the roof is still leaking.

The Landlord provided written submissions. Legal Counsel made the following further submissions. There was a leak in the roof of the rental unit which was repaired January 03, 2021. The Landlord has responded to the Tenant within a reasonable period each time the Tenant has raised the mold issue. The Landlord has attended the rental unit to check on the mold issue. The evidence shows the mold issue is getting better. The Tenant has not met their onus to prove emergency repairs are required. There is no evidence that the Tenant's health or safety is in jeopardy due to the mold. The note in

evidence from a registered nurse does not include anything conclusive about the mold in the rental unit causing the Tenant a health issue.

The Tenant submitted the following relevant admissible documentary evidence:

- Photos of mold in the rental unit
- Photos of the Tenant with swollen eyes
- A letter to the Landlord about fixing the mold issue
- Notes of conversations between the parties
- Witness statements
- Written submissions
- A letter from a nurse practitioner

The Landlord submitted the following relevant documentary evidence:

- Documentation about the roof repair
- Photos of the mold issue being addressed
- Text messages
- Prior RTB decisions
- Written submissions

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim.

Section 33 of the *Residential Tenancy Act* (the “Act”) defines “emergency repairs” as follows:

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.

The Tenant seeks an order that someone attend the rental unit to do a mold inspection due to visible mold in the rental unit. This request does not meet the definition of an emergency repair as inspecting for mold or addressing a mold issue is not enumerated in section 33(1)(c) of the *Act*. When asked how the request met section 33(1)(c) of the *Act*, the Tenant testified that there was a roof leak. The Tenant could not confirm that there is currently a roof leak. Legal Counsel for the Landlord advised that the roof leak was fixed in January. The Landlord submitted documentation which supports that the roof leak has been addressed. In the circumstances, I am not satisfied there continues to be a roof leak that requires repair. Nor am I satisfied the Tenant has pointed to an emergency repair that is required. Therefore, the Tenant's request for emergency repairs is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 05, 2021

Residential Tenancy Branch