Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order for emergency repairs; and to recover the $100.00 cost of their Application filing fee.

The Tenants, the Landlord, and the Landlord's counsel, T.A. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Our records show that the Tenants received the Notice of Hearing package from the RTB on May 17, 2021. Counsel said that the Landlord received the Tenants' Notice of Hearing, application package and evidence on May 20, 2021 via registered mail. This was confirmed by the Canada Post registered mail tracking numbers provided by the Tenants. The Tenants said that everything they had submitted to the RTB was contained in the package that they served to the Landlord and her Counsel.

Policy Guideline 51 ("PG #51"), "Expedited Hearings", states that "The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits. . . . Expedited hearings are usually limited to applications for dispute resolution for: . . . emergency repairs under section 33 of the RTA." PG #51 goes on:

> **Serving Documents Related to an Expedited Hearing**
>
> Section 71(2)(a) and (c) of the RTA . . . allow the director to order that documents

must be served in a manner the director considers necessary, despite the methods of service provided for in sections 88 and 89 of the RTA . . ., and that a document not served in accordance with those sections is sufficiently given or served for purposes of the Act.

The director has issued a standing order on service establishing the methods of service that parties to an expedited hearing must use, unless ordered otherwise by the director.

The director may require an applicant to confirm the method of service they will use to serve the application documents and evidence on the respondent before setting the application down for an expedited hearing. Once served, the applicant must complete an **#RTB – 9 Proof of Service: Notice of Expedited Hearing - Dispute Resolution Proceeding** form and submit it to the online intake system, the Residential Tenancy Branch, or a Service BC office at least two days before the hearing.

Failure to serve the respondent as required or as ordered by the director, or to submit the #RTB – 9 Proof of Service form, may result in the application being dismissed or the hearing being adjourned to a later date. .

[emphasis in original]

Rule 10 addresses Expedited Hearings, and authorizes the Director to set the matter down to be heard on a date that is earlier than would normally be required to accommodate time limits established under these rules in cases of extreme urgency.

. Rule 10.3 states:

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]. .

[underlining emphasis added]

The Tenants said that that they were instructed by an RTB Information Officer to serve the Landlord with these materials within one day, as set out in Rule 10.3, and they were told to serve the documents by registered mail. However, section 90 of the Act states that a document that is mailed - even by registered mail - is deemed to be received "…on the fifth day after it is mailed", unless received earlier. As such, the Tenants' evidence is that they served the Landlord with their documents by registered mail sent on May 18, which is deemed served on May 23; however, Counsel acknowledged that the Tenants' documents were received by the Landlord on May 20, 2021. Regardless, the Tenants' Notice of Hearing documents were served to the Landlord three days after they were received by the Tenants from the RTB. As such, the Tenants served their expedited hearing documents too late, according to the Rules, which Rules are authorized by section 9 of the Act.

The Tenants acknowledged that they received the Landlord's evidence prior to the hearing and that they had sufficient time to consider the Landlord's evidence.

Rule 10.5 addresses the time limit for a respondent to serve their evidence on the applicant. This Rule states: "The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing."

Given that the expedited hearing was not scheduled until June 7, 2021, I find that the Landlord had from May 20 to June 5, 2021 to submit their response to the Tenants' Application to the RTB and to serve it on the Tenants. Our records show that the Landlord submitted their evidence to the RTB on May 26 and 27, 2021. In the hearing, Counsel advised that the Landlord served the Tenant with this response on "May 26, 2021 in person." Counsel did not indicate that the Landlord was rushed for time to respond in these circumstances.

When I consider the evidence and authorities before me in this matter, overall, I find that the Landlord was not denied any fairness by having received the Tenants' Notice of

Hearing package on May 20, rather than May 18, 2021. I find that the Rules around tighter timelines for expedited hearings serve to ensure that both Parties have sufficient time to present their version of events. As the Landlord submitted their evidence nine days before they had to, I find that they had sufficient time to respond in this specific set of circumstances. I, therefore, proceeded with the hearing and have considered both Parties' submissions in this matter.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the Landlord be ordered to make emergency repairs, and if so, which ones?
- Are the Tenants entitled to recovery of their $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on November 1, 2018, ran to October 31, 2019, and then operated on a month-to-month basis. They agreed that the Tenants pay the Landlord a monthly rent of $1,710.00, due on the first day of each month. They noted that the monthly rent includes a repayment amount of $60.00, which makes up for unpaid rent owing by the Tenants to the Landlord for some of the months affected by Covid pandemic in 2020. The Parties agreed that the Tenant paid the Landlord a security deposit of $825.00, and no pet damage deposit.

In the hearing, the Tenants said they seek to have the sewage piping on the residential property "re-piped" pursuant to plumbers' recommendations. The Tenants said the re-piping Is necessary for the main sewer line to act as intended. They said:

> The gravitational feed takes the waste away from the property. The house has sunk or sagged, and the floor boards or frame of the house is creating downward pressure on a pipe that needs to be gravity fed. They've settled on the pipes, and it's no longer operating as intended. The way the pipe is intended to operate, gravitational forces help the waste to go out to the sewer line, but the weight of the house is bringing pressure – the technical term is 'back grading" by plumbers. All these noxious odors and smells are coming up constantly. There are clogging and blockage issues.

The Tenants referred me to a plumber's report on page seven of their evidence, which had a service date of February 4, 2021. Within this report, the plumber, [M.], said:

> Job report:
>
> Technicians set up work station and sucked out all of the sewage in the toilet bowl and removed from site to be disposed of in a safe manner. Toilet was lifted inside the dwelling and snaked to the extent of 30'. Line was partially cleared but a solid obstruction was found in the line. A cross wye fitting was found in the crawl space and main sanitary line found to be partially sagging due to settling. Technicians to dig down further to expose cap to snake further in to the line to clear blockage. Estimate was presented to continue working. Awaiting approval.
>
> Technicians continued job by removing the cap below the crawl space and snaked the line to the extent of 100'. Blockage was cleared. Line was found to be back grading for 20' at the point of the connection between the left and right side of duplex.

In an email to the Landlord from the Tenants dated February 10, 2021, the Tenants sent the Landlord the bill for the plumbing work done by [M.]. The Tenants concluded the email, as follows:

> Lastly, please note, we've been advised by [M's] Plumbing that the main sewer line needs replacing as the homes are sloping causing pressure on the line. Please refer to the notes within the report. As such, please note we've been advised that a backup is likely to occur again, as clogging will happen due to the pipes positioning.

The Tenants referred me to further evidence of text communications between the Parties. Between March 1, 2021, and April 5, 2021, the Parties discussed the issue of

an ongoing smell coming from the drains and the crawl space, due to clogs and leaks. The Landlord referred to three different plumbers who were consulted and who attended the residential property about the problem.

In the Landlord's written submissions starting on Tab 1, the Landlord said they agree with the timeline in the Tenants' evidence in paragraphs 1 – 36 of the Tenants' submissions, "with the exception of paragraph 26". Paragraph 26 of the Tenants' submissions states:

> 26. Gordon of [[V.] P.D.] arrives on property and confirms original diagnosis of [M.'s] Plumbing on Feb 4, 2021 of 20' back grading and sagging line. Tenant 1 & 2 were instructed by Gordon to pour bleach down the drain for a temporary solution but the necessary remedy would be to fix the back grading and repipe the main sewer line. Gordon also advised he would be unwilling to complete the repair due to the size of the job and the cramped working space of the crawlspace.

The Landlord addressed paragraph 26 as follows:

> 8. With respect to paragraph 26, the Landlord denies that Gordon of [V.P.D.] made any findings with respect to: 'grading for 20' at the point of connection between left and right-side duplex'. Gordon did however speculate that the cause of the issue could be related to back grading.

The Landlord's evidence included an invoice from the plumber, [V.P.D.], dated April 16, 2021. This invoice includes the following starred statement:

> House needs a complete drainage repipe. The sewer main is back grading. This could be the cause of all the problems.

However, in another note from this plumber dated May 25, 2021, [G.C.] from [V.P.D.] said:

> After inspection on [residential property address], no puddles, open sewer lines, leaking pipes or real smell was found below in the crawl space of the half duplex. All the piping was connected and dry. With the exception of the main sewer line being on a slight back grade everything is working. The smell in the house could be controlled with bleach down the toilet once a week. In my opinion this situation would not be considered a health and safety issue.

Counsel drew my attention to page 16 of the Tenant's evidence, which contains text messages between the Tenants and the Agent. The texts noted by Counsel included:

> Thursday, March 18, 2021
> [Tenant]
> You were aware of the sewage smell as of March 3rd, 2021 by me in text to you where you then confirmed knowledge of the smell. As well, Amir [C. Plumbing] your plumber, advised you of the sewage smell post hydrojetting on the first attempted repair. Because the sewage smell had continued post attempted repair, Amir was prompted to check the crawlspace to find the leaking pipe, the main pipe issues and the leaking sewage into the soil in the crawlspace, under the house.
>
> Please provide an update on when this will be fixed as this is a health and safety issue. Both the city of [city] and Amir at [C. Plumbing] have advised this is a health and safety concern and we are proceeding to have an inspector out to test the soil for contamination. Additionally, we're waiting on a quote for main sewer line replacement. We will provide that [to] you once available within the next 24 hours.
>
> [Agent]
> [C. Plumbing] said the smell was because of the leak, today it sounds like yo're talking about a different smell?
>
> [Tenant]
> The smell coming from the crawlspace is due to the leak, the smell coming from the bathtub drain and the kitchen sink is something else.

The Landlord submitted invoices from [C.'s] Plumbing dated March 10, 2021, and March 16, 2021. The first invoice describes the visit as for "locating the source of clogged in the sewer line at the above property." This invoice then provides the cost of labour and materials; however, there is no comment as to the cause of the clogged sewer line.

The second invoice from this plumber described the work as "Fix the sewer pipe leak in the crawl space. Parts and materials included." Again, there is no comment on the cause of the leak.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The first issue I must address is whether the evidence before me demonstrates that any repairs needed can be considered “emergency repairs” under the Act. Section 33 of the Act sets out that emergency repairs are “urgent, necessary for the health or safety of anyone or for the preservation or use of residential property”, and are 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.

Based on the evidence before me overall, I find that the issues raised by the Tenants amount to emergency repairs pursuant to section 33 of the Act. I find that the evidence from [M.’s] Plumbing, and the Landlord’s evidence from G.C. at [V.P.D.], corroborate the Tenants’ claim that a sewage smell was emanating from the plumbing fixtures in the rental unit. Further, both plumbers noted having observed back grading, which may require the main sewer line to be re-piped.

I find that there is an urgency surrounding having the smell of sewage in a rental unit. I find that eliminating this smell is a matter of some urgency, which is necessary for the use of the residential property, and amounts to repairing damaged or blocked sewer pipes. I find from the reports of two of the three plumbers referenced, that without emergency repairs or the re-piping of the main sewer line to remove the back grading, it is unlikely that the sewage smell will be eliminated, other than on a temporary basis with bleach.

G.C. acknowledged that there is a smell in the rental unit that comes from the plumbing system, as he suggested pouring bleach down the toilet once a week. However, G.C. said that he does not consider this a health and safety issue, though he admits that this is just his opinion. The note from G.C. does not indicate this person’s title or qualifications to draw conclusions about health and safety; however, it is written on the plumber’s letterhead, which gives it some credibility.

The consistent evidence before me from the plumbers is that the residential property has an issue with back grading. G.S. stated that “This could be the cause of all the problems.”

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant.

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the Act, including an order that the landlord comply with this Act, the regulations, or a tenancy agreement. Therefore, pursuant to sections 32, 33, and 62 of the Act:

- **I Order** that the Landlord have a licensed and qualified professional (or professionals, as required), from a business in good standing in the community attend the Tenants’ rental unit as soon as reasonably possible and not more than 30 days after the date of this Decision to assess the condition of the gravitational feed takes the waste away from the property for the residential property, and identifies of back grading is an issue to be resolved.

- **I Order** the Landlord to give proper written notice of the date and time that the professional will attend the rental unit for the inspection in accordance with section 29(b) of the Act, so that the Tenants may arrange to be home or to have a representative of their choosing present.

- **I Order** that the Landlord obtain from the qualified professional a written report of the inspection completed which identifies the company or professional by name, states the date and time of the inspection, the system(s) inspected, lists any deficiencies or malfunctions identified, and any suggestions made for repairs.

- **I Order** that the Landlord provide a copy of this the report to the Tenants as soon as reasonably possible and not more than five (5) days after receipt of the report by the Landlord.

- **I Order** the Landlord to have any problems or deficiencies identified in the report repaired as soon as reasonably possible, and in any event, to start these repairs not more than 30 days after the date the professional inspects the rental unit, and

to complete these repairs in a time and manner that is reasonable in the circumstances.

Should the Landlord fail to comply with the above noted Orders as written, the Tenants are authorized to deduct $50.00 per month from their rent until the Landlord complies with the above noted Orders. If the Landlord has not complied with the above noted Orders within six months after the date of this Decision, the rent reduction is increased to $100.00 per month until the Landlord complies with these Orders. This rent reduction **only** applies if the Landlord fails to comply with the specific Orders noted above, not if the Tenants simply disagree with the findings of the qualified professional(s) in the reports or the recommendations made by them regarding any necessary repairs.

Given their success in this Application, I award the Tenants with recovery of their **$100.00** Application filing fee, pursuant to section 72 of the Act. The Tenants are authorized to deduct $100.00 from one upcoming rent payment in complete satisfaction of this award.

Conclusion

The Tenants' Application seeking an Order for the Landlord to complete emergency repairs is granted. I, therefore, Order the Landlord to comply with this Decision and the Orders described above.

Given their success, the Tenants are awarded recovery of their **$100.00** Application filing fee, pursuant to section 72 of the Act. The Tenants are authorized to deduct $100.00 from one upcoming rent payment in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 09, 2021

Residential Tenancy Branch