



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

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

- an Order for emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Both parties agree that the tenants personally served the landlord with this application for dispute resolution on July 16, 2021. This dispute resolution package was made available to the tenants for service on July 12, 2021.

Rule 10.3 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

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].

I find that the tenants did not serve the landlord with this application for dispute resolution in accordance with Rule 10.3 of the Rules.

The tenant's application for dispute resolution states:

Despite many attempts to have the landlord bring in a new roofing company, the roof is still leaking. The initial leak started May 17th, 2021, and has continued daily in one bedroom, front hall closet, and entryway. The initial roofer has been back to the property multiple times and has made no progress. We are asking that a new roofing firm come in and fix the leaking section of the roof. We currently do not have access to approximately 50% of our home due to the displacement this has caused.

Both parties agree that the roof was repaired on July 15, 2021, before the landlord was served with this application for dispute resolution.

The tenants' written submissions uploaded to the Residential Tenancy Branch Dispute Management System state that they are now seeking the following:

- an Order for the Landlord to sign a Work Authorization form allowing work to commence on the section of house that is under the insurance claim as the demolition has only been partially complete and preliminary tests are showing that subfloor and flooring will need to be removed as they are still currently saturated.
- an Order for the Bedroom portion of the restoration which is the area that was leaking due to the roofing damage in the ballpark of \$20,000 to commence.

I find that the original application for dispute resolution sought to repair the roof, which is an emergency repair as defined in section 33 of the *Act*. Section 33 of the *Act* states:

- 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.

While I accept that the damage the tenants are seeking to have remediated may have originated from the leaking roof, the repairs that are now currently sought, are not emergency repairs as defined by section 33 of the *Act* and were not sought in the original application for dispute resolution. I find that for the orders now sought to be heard, the tenants' application for dispute resolution would need to be amended.

Residential Tenancy Policy Guideline #51 (PG #51) states:

Except where required in the circumstances, an expedited hearing is not a way to bypass normal service and response time limits to get a quicker hearing. Therefore, once an application for an expedited hearing is made, it cannot be amended except at the hearing with the permission of the arbitrator.

This is to prevent applicants from "queue jumping", for example, by applying for emergency repairs and then amending the application to request repairs for the replacement of a fridge or oven which is not considered an emergency. Another example is applying for an early end to the tenancy and then attempting to amend the application for an order of possession for unpaid rent and a monetary order for unpaid rent. These types of applications are not appropriate for the expedited hearing process.

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.

Pursuant to PG #51 I decline to amend the tenants' application for dispute resolution as it amounts to queue jumping. I dismiss the tenants' application for dispute resolution without leave to reapply because the emergency repair sought by the tenants has already been made. The tenants remain at liberty to file an application for regular repairs for the orders sought in their written submissions.

Conclusion

The tenants' application for dispute resolution 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: July 30, 2021

Residential Tenancy Branch