



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 Tenants on April 19, 2021 (the “Application”). The Tenants sought an order that the Landlord make emergency repairs.

The Tenant, M.M.C., appeared at the hearing for the Tenants. The Landlord appeared at the hearing with Counsel. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant and Landlord provided affirmed testimony.

In the Application, the Tenants applied for repairs in relation to four issues. At the hearing, the Tenant sought further repairs than those noted in the Application. The Landlord confirmed they were prepared to address all issues raised by the Tenant at the hearing. The Landlord also confirmed they were prepared to address all issues raised by the Tenant regardless of whether the repairs sought were “emergency repairs”. Given this, I heard the parties on all issues raised by the Tenant regardless of whether they are “emergency repairs”.

Preliminary Issue – Service

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 from the RTB in May. The Landlord testified that they received the Tenants’ evidence by email but could not open the evidence. The Landlord testified that they sent the Tenants correspondence about not being able to open their evidence and the Tenants did not re-send their evidence or provide it in a different format.

The Tenant agreed their evidence was sent by email to the Landlord. The Tenant acknowledged the Landlord told them they could not access the evidence. The Tenant testified that they were not sure how to send their evidence in a different format and that they did not try to do so.

Rule 3.10.5 of the Rules states:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

It was the Tenants' responsibility to ensure the Landlord could access the evidence they intended to rely on at the hearing. I am satisfied the Landlord could not access the Tenants' evidence and that the Landlord informed the Tenants of this. I am not satisfied the Tenants took further steps to provide the Landlord with their evidence in a format that the Landlord could access. I am not satisfied the Tenants complied with rule 3.10.5 of the Rules.

Rule 3.17 of the Rules states:

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 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].

I told the parties I would consider whether the Tenants' evidence should be admitted or excluded pursuant to rule 3.17 of the Rules and I heard the parties on this issue. Counsel submitted that the evidence should be excluded because the Landlord does not know what the evidence includes and admission would cause prejudice to the Landlord. The Tenant submitted that the evidence should be admitted because Counsel should have been able to access the Tenants' evidence, the Tenants are representing themselves and the Tenant has two full time jobs and has been trying to figure out the legalities of this process.

I excluded the Tenants' evidence pursuant to rule 3.17 of the Rules. Again, it was the Tenants' responsibility to ensure the Landlord could access their evidence and I am not satisfied the Tenants took adequate steps to do so. I found it would be unfair to the Landlord to admit evidence when I was satisfied the Landlord had not seen the evidence and therefore could not respond to it at the hearing. I did admit the tenancy agreement submitted by the Tenants because I reviewed it with the parties and the parties agreed it is accurate.

The Tenant confirmed receipt of the Landlord's evidence and did not raise an issue with service of the evidence when asked.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony and submissions of the parties as well as the Landlord's documentary evidence. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord make repairs?

Background and Evidence

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

The Tenant sought an order that the Landlord address the following issues in the rental unit:

- Upstairs main bathroom
 - Mildew
 - Walls have bubbled
 - Repair of a prior repair attempt because it is bubbling
 - Toilet constantly flowing causing water to leak into the floor and through to the lower bathroom
 - Window that is cracked open
 - Cracks in the bathtub
 - Mildew and black mold around the bathtub
 - Squishy floor

- Lower bathroom
 - Trim around base of floor has bubbled, mildew, drywall has bubbled, odour
 - Toilet constantly flowing causing water to leak into the stairs
- Storage room under the stairs
 - Mold inside the walls
 - Walls have bubbled
 - Floor is warping
- Living room through to kitchen
 - Corner of the flooring is lifting, a draft is coming through the electrical outlet
 - Floor panels are warped and peeling apart from each other in the kitchen
 - Water damage to the countertop and cabinet under the sink in the kitchen due to a prior leak
- Partially done paint job throughout the rental unit

Counsel for the Landlord stated as follows. The Landlord does not agree that the repairs sought are required for health or safety reasons. However, the Landlord agrees the bathrooms are older and agrees to doing renovations. Further, the Landlord agrees three windows in the rental unit need to be replaced. The Landlord has been trying since August of 2020 to do repairs but has had difficulty coordinating repairs with the Tenants who have denied access to the rental unit.

Counsel and the Landlord agreed that the Landlord intends to address the following issues in the rental unit through renovations or repairs:

- Upstairs main bathroom
 - Mildew
 - Walls have bubbled
 - Repair of a prior repair attempt because it is bubbling. Counsel stated that the Landlord does not agree this is an issue; however, the Landlord is going to seal and paint the walls. The Landlord agreed the planned renovations or repairs will address any issue in this regard.
 - Toilet constantly flowing causing water to leak into the floor and through to the lower bathroom
 - Window that is cracked open
 - Cracks in the bathtub

- Mildew and black mold around the bathtub. The Landlord denied that this is an issue; however, the Landlord testified that they intend to renovate the walls around the bathtub.
- Squishy floor
- Lower bathroom
 - Trim around base of floor has bubbled, mildew, drywall has bubbled, odour
 - Toilet constantly flowing causing water to leak into the stairs. The Landlord testified that the Tenants have not previously told the Landlord about this issue; however, the Landlord agrees to address this issue.

In relation to the above issues, the parties came to an agreement about the following:

- The Landlord will send proper notice of entry to the Tenants by email at the email address noted on the front page of this decision at least two weeks prior to the date and time of entry to do the repairs and renovations.
- If the Landlord provides proper notice of entry in accordance with the above point, the Tenants will make the date and time work and will allow access to the rental unit.
- If the Landlord provides proper notice of entry in accordance with the above point, and the Tenants do not make the date and time work and do not allow access, the Landlord is no longer obligated to complete the repairs and renovations in accordance with the agreement between the parties and the relevant sections of the *Residential Tenancy Act* (the “Act”) will apply.
- The repairs and renovations will be done by qualified professionals.

The parties could not agree on when the repairs and renovations in relation to the above issues should be completed. The Landlord sought eight months to complete the repairs and renovations. The Tenant submitted that two to four months is appropriate. Both parties agreed that I could decide when the repairs and renovations in relation to the above issues should be completed.

I asked the Tenant why access to the rental unit has been an issue given both parties want the above issues addressed. The Tenant testified as follows. The Tenants have been trying to get the requested repairs done. There has been back and forth between the Tenants and Landlord to try and find a good day for the repairs to be done. The

Tenants were going to go to their parents' while the repairs were done; however, could not do so. There is asbestos in the rental unit and the Tenants do not have a place to take their children during the repairs. There has been a lack of communication between the parties and the Landlord has tried to enter the rental unit without proper notice.

At the hearing, the Landlord sought to continue with window repairs scheduled for the day after the hearing. The Tenant would not agree to accommodate the window repairs on August 10, 2021 and it was decided that the Landlord would reschedule the window repairs and comply with the agreement between the parties set out above.

Counsel and the Landlord denied that the following are issues in the rental unit:

- Storage room under the stairs
 - Mold inside the walls
 - Walls have bubbled
 - Floor is warping
- Living room through to kitchen
 - Corner of the flooring is lifting, a draft is coming through the electrical outlet
 - Floor panels are warped and peeling apart from each other in the kitchen
 - Water damage to the countertop and cabinet under the sink in the kitchen due to a prior leak
- Partially done paint job throughout the rental unit

In relation to the rental unit being partially painted, the Tenant testified that the rental unit was partially painted at the outset when the Tenants viewed the rental unit and agreed to rent it. The Tenant testified that the Landlord agreed to re-paint the rental unit. The Landlord denied that they agreed to re-paint the rental unit.

In relation to documentary evidence, the Landlord submitted a notice of entry, correspondence between the parties, correspondence between the Landlord and tradespeople, quotes for repairs and renovations and photos of the bathrooms.

Analysis

I reiterate at the outset that I have considered the Tenants' request for repairs regardless of whether the repairs meet the definition of "emergency repairs" in section

33 of the *Act* because the Landlord confirmed they were prepared to address the issues raised regardless of whether they are “emergency repairs”.

The parties agreed about some of the repairs and renovations and did not agree about others. I have addressed the repairs and renovations agreed upon separately from the repairs not agreed upon.

Repairs and Renovations Agreed Upon

As stated, the parties agreed to the following:

- The Landlord will address the following issues in the rental unit through repairs and renovations:
 - Upstairs main bathroom
 - Mildew
 - Walls have bubbled
 - Repair of a prior repair attempt because it is bubbling
 - Toilet constantly flowing causing water to leak into the floor and through to the lower bathroom
 - Window that is cracked open
 - Cracks in the bathtub
 - Mildew and black mold around the bathtub
 - Squishy floor
 - Lower bathroom
 - Trim around base of floor has bubbled, mildew, drywall has bubbled, odour
 - Toilet constantly flowing causing water to leak into the stairs
- The Landlord will send proper notice of entry to the Tenants by email at the email address noted on the front page of this decision at least two weeks prior to the date and time of entry to do the repairs and renovations.
- If the Landlord provides proper notice of entry in accordance with the above point, the Tenants will make the date and time work and will allow access to the rental unit.

- If the Landlord provides proper notice of entry in accordance with the above point, and the Tenants do not make the date and time work and do not allow access, the Landlord is no longer obligated to complete the repairs and renovations in accordance with the agreement between the parties and the relevant sections of the *Residential Tenancy Act* (the “Act”) will apply.
- The repairs and renovations will be done by qualified professionals.

The above agreement is binding on the parties and both parties must comply with it pursuant to section 63(2) of the *Act*. The agreement only relates to the repairs and renovations set out above. The agreement does not relate to entry into the rental unit other than in relation to the repairs and renovations agreed upon. If the Landlord wants to enter the rental unit for other reasons, the Landlord is only required to comply with section 29(1) of the *Act* which is set out below.

Timeline for Repairs and Renovations Agreed Upon

The parties could not agree on a timeline for the repairs and renovations and agreed to let me decide this issue.

The Landlord’s documentary evidence supports that the Landlord has been taking steps to do repairs and renovations in the rental unit since November of 2020. I find the Landlord’s documentary evidence, including the notice of entry and the communications between the parties, support that the Tenants have contributed to the delay in the repairs and renovations being completed. I find from the communications between the parties that the Landlord has been attempting to get the repairs and renovations done and the Tenants have not worked with the Landlord to accommodate the repairs and renovations.

Further, the Tenant would not accommodate the window repairs scheduled for August 10, 2021. I acknowledge that the Tenant has legitimate concerns about asbestos in the rental unit and the safety of their family. However, if the Tenants feel that they need to vacate the rental unit for 24 hours for safety reasons while the repairs and renovations are being completed, then the Tenants need to arrange to vacate the rental unit on their own accord. The Tenants did not do so and now the Landlord must reschedule the window repairs. I note that the documentary evidence shows that the Tenants were made aware of the window repairs on July 30, 2021, ten days before the scheduled repairs.

In considering an appropriate deadline for the repairs and renovations, I have also considered that these need to be completed by companies and qualified professionals who may not be available to do the necessary work immediately. Further, the repairs and renovations may take some time once started.

Considering the above, I order the Landlord to have the agreed upon repairs and renovations completed as soon as possible and within six (6) months of the date of this decision.

I note the following further points.

If the Landlord provides proper notice of entry in accordance with the agreement between the parties, and the Tenants do not allow access, the Landlord is no longer obligated to complete the repairs and renovations in accordance with the agreement between the parties as detailed above, or within the six (6) month deadline, and the relevant sections of the *Act* apply.

In relation to the relevant sections of the *Act*, the Landlord always has an obligation to repair and maintain the rental unit in accordance with section 32 of the *Act* which states:

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.

Further, the Landlord has a right to enter the rental unit to comply with the Landlord's obligations under section 32 of the *Act*. The Landlord's right to enter the rental unit is set out in section 29 of the *Act* which states:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

(emphasis added)

For clarity, the Landlord does not require the Tenants' permission to enter the rental unit. If the Landlord provides notice of entry in accordance with section 29(1)(b) of the *Act*, the Landlord can enter the rental unit whether the Tenants agree to that entry or not.

If the Tenants bar entry to the rental unit after being provided proper notice in accordance with section 29(1)(b) of the *Act*, the Tenants could be served with a One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*.

Further, the Tenants do not have a right to be present when the Landlord enters the rental unit. If the Landlord provides notice of entry in accordance with section 29(1)(b) of the *Act*, the Landlord can enter the rental unit using their own keys or access devices whether the Tenants are present at the rental unit or not.

I also note that, in the future, if there are repairs needed in the rental unit, the first step is for the Tenants to send the Landlord a written request for the repairs.

Repairs Not Agreed Upon

The parties disagreed about whether the following are issues in the rental unit:

- Storage room under the stairs
 - Mold inside the walls
 - Walls have bubbled
 - Floor is warping
- Living room through to kitchen
 - Corner of the flooring is lifting, a draft is coming through the electrical outlet
 - Floor panels are warped and peeling apart from each other in the kitchen
 - Water damage to the countertop and cabinet under the sink in the kitchen due to a prior leak
- Partially done paint job throughout the rental unit

This is the Tenants' Application and, pursuant to rule 6.6 of the Rules, the Tenants have the onus to prove they are entitled to a repair order.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In relation to the partially done paint job, the Tenant acknowledged that the paint is the same as when the Tenants agreed to rent the unit. The Tenant testified that the Landlord agreed to re-paint the rental unit. The Landlord denied that they agreed to re-paint the rental unit. In the absence of further evidence showing that the Landlord agreed to re-paint the rental unit, I am not satisfied the Landlord did. I find the Tenants are seeking to have the rental unit re-painted despite agreeing to rent the rental unit partially painted. I do not find this to be a repair issue as painting is not a repair. I decline to order the Landlord to re-paint the rental unit.

In relation to the remaining issues raised, the Tenant did not rely on any of the admissible documentary evidence to support their position that the above are issues in the rental unit. In the absence of further evidence showing that the above are issues in the rental unit, the Tenants have failed to prove that further repairs are required. The request for a repair order in relation to the above noted issues is dismissed without leave to re-apply.

Conclusion

The parties came to an agreement about the following issues in the rental unit:

- Upstairs main bathroom
 - Mildew
 - Walls have bubbled
 - Repair of a prior repair attempt because it is bubbling
 - Toilet constantly flowing causing water to leak into the floor and through to the lower bathroom
 - Window that is cracked open
 - Cracks in the bathtub
 - Mildew and black mold around the bathtub
 - Squishy floor
- Lower bathroom
 - Trim around base of floor has bubbled, mildew, drywall has bubbled, odour
 - Toilet constantly flowing causing water to leak into the stairs

The parties are bound by the agreement outlined in this decision in relation to the above issues.

Pursuant to section 62 of the *Act*, I order the Landlord to have the agreed upon repairs and renovations (at page 8 of the decision) completed as soon as possible and within six (6) months of the date of this decision.

Pursuant to section 62 of the *Act*, I order the Tenants to allow access to the rental unit as described in this decision.

The Tenants have failed to prove they are entitled to a further repair order and therefore this aspect of 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: August 18, 2021

Residential Tenancy Branch