



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 Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Emergency repairs to the rental unit pursuant to Sections 33 and 62 of the Act; and,
2. Recovery of the filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords, GC and WC, and their counsel, PO, attended the hearing at the appointed date and time. The Tenant, BC, and Advocate, KC, attended the hearing at the appointed date and time.

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

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

The Tenant served PO with the Notice of Dispute Resolution Proceeding on September 22, 2021 by email (the "Notice"). PO confirmed receipt of the Notice on September 23, 2021. The Tenant served PO with all evidence by email on September 23, 2021. I find that the Landlords were served with the Notice and all evidence pursuant to Section 89(1)(f) of the Act.

PO served the Landlords' evidence package on the Tenant via email as previously agreed upon on October 15, 2021. The Tenant confirmed receipt of the Landlords' evidence package, and that they had sufficient time to review it prior to the hearing. I find that the Tenant was served in accordance with Section 88(j) of the Act.

Preliminary Matters

Bias/Conflict of Interest

I was alerted to a possible appearance of bias or a conflict of interest. I recognized one name associated with one party with which I had a past professional relationship. I told the parties that I have no reasonable apprehension of bias in this matter and can be objective to decide this application. None of the parties objected to me hearing this application.

KC also clarified that although he has the same last name as the Tenant, they have no connection on a family level.

Does the RTB have jurisdiction to hear the dispute between the parties?

The Landlords submit they are not in a Landlord/Tenant relationship with the Tenant where the RTB would have jurisdiction to hear this application. PO submits that the Tenant is an occupant in the rental unit, and not a tenant.

Relevant definitions and provisions in the Act:

"landlord", in relation to a rental unit, includes any of the following:

- (a) *the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
 - (i) *permits occupation of the rental unit under a tenancy agreement,*
or
 - (ii) *exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*

....

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"tenant" includes ... when the context requires, a former or prospective tenant.

What this Act applies to

- 2 (1) *Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.*
- (2) *Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.*

This Act cannot be avoided

- 5 (1) *Landlords and tenants may not avoid or contract out of this Act or the regulations.*
- (2) *Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

The Tenant stated she lived on the property three years ago for a six-month period. She recently moved back to the property.

On March 1, 2021, the Tenant entered into a periodic tenancy agreement with BC, who claims to be the property manager for the Landlords. The tenancy agreement names the Landlords' numbered company. Monthly rent is \$800.00 payable on the first day of each month. No security deposit was collected at the beginning of the tenancy.

The Tenant knows that the Landlords are the owners of the property, but the Tenant has not had any dealings with the Landlords. The Tenant submits that she has seen evidence of BC acting as the property manager of the property. BC testified he gets his authority to act as the property manager from GC, they have been partners for years and he is always their go to person for the property. BC stated that GC was aware of

other tenancy agreements made with respect to the property. He submitted that a previous caretaker's tenancy was ended using the RTB's notice to end provisions.

BC says he pays money to the Landlords to maintain the property. BC also pays money to the Landlords to cover the hydro bills, which he states, he has been paying for the last couple years. WC says she pays the hydro bills, and BC reimburses them for some of that expense.

PO states that BC is a relative of GC, and BC is permitted to live on the property out of the owners' goodwill. The parties also referred me to another RTB file matter to be heard in regard to this property. That file number is noted on the cover sheet of this decision.

I find the Tenant had, prior to vacating her unit, exclusive possession of her premises in return for payment of rent. The Tenant is the named party on the tenancy agreement submitted into documentary evidence. I find that BC acts as the owners' agent or, at least, another person on the Landlords' behalf, who permits occupation of the rental unit under a tenancy agreement. Occupants are not named on tenancy agreements, rather occupants reside with tenants. I find that the Tenant in this claim is a tenant as contemplated under the Act. I was not referred to other evidence that would suggest that this not a valid tenancy agreement.

Section 5 of the Act states that landlords and tenants may not avoid this Act or its Regulations. Based on the testimony of the parties, and the submitted documentary evidence, I find that this tenancy and this application fall under the jurisdiction of the Act, and I will hear the Tenant's application.

Issues to be Decided

1. Is the Tenant entitled to an Order for emergency repairs to the rental unit?
2. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

PO submitted that BC made electrical connections on the property that the Landlords said have put the property at risk. The Landlords commenced work to put the electrical connections into good repair. The Landlords submitted documentary evidence from the project manager of an electrical contracting service company that reviewed the regulator's electrical inspector's concerns on the property. The report outlines the non-compliant portions of the inspection and the follow up inspection date. On a subsequent day, the electrician addressed many of the immediate dangers, but this still left the Tenant's residence with no electricity.

GC testified that the Tenant's cabin should not have power, the cabin was built without any permits and they were going to tear it down. The electrician has reported to GC that he will not authorize the electricity to be turned back on in the cabin. BC Hydro needs that authorization before electricity will be made available.

The Tenant did not testify that these repairs are of an emergency nature. The Tenant did testify that she never requested the Landlords to make the repairs. The Tenant said she can neither use the stove burner and the oven, nor the space heater and the oven at the same time. The Tenant did not provide evidence that these repairs were needed immediately, in fact, the Tenant moved to a different structure on the property when the cabin electricity was disconnected. The Tenant did not provide evidence that there was an immediate danger or threat to her well being on account of the disconnected electricity. The Tenant submits because the electricity is disconnected this constitutes an urgent repair.

PO submitted that electrical repair work commenced on August 31, 2021, before the Tenant began this dispute resolution for emergency repairs. PO stated that the owners are trying to rectify the electrical deficiencies on the property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 33 of the Act is the relevant section for this matter:

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*
....
 - (v) *the electrical systems, or*
....
- (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.*
-

The Tenant testified that because there is no electricity in her residential unit, that she deemed this as urgent. The Tenant did not disclose any evidence why it was necessary that she only needed to be in her residential unit for her health and safety and did not demonstrate that the disconnected electricity caused her any immediate danger or threat. She testified that she relocated to another structure on the property when the electricity was disconnected.

More importantly, the Tenant did not make any attempts, verbally or in writing, to the Landlords that emergency repairs were needed. Notifying the Landlords that emergency repairs are needed is a condition that must be met to possibly get emergency repairs done. I find that the electrical repairs requested in this matter are neither urgent nor necessary for the health or safety of the Tenant. As I do not find that these electrical repairs are urgent or necessary, I dismiss the Tenant's application for an Order of emergency repairs to the rental unit without leave to re-apply.

As the Tenant is unsuccessful in her dispute resolution application, I deny the recovery of the filing fee to her.

Conclusion

Based on my findings above, the electrical repairs are not urgent or necessary, and I deny an Order of emergency repairs 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: November 1, 2021

Residential Tenancy Branch