



Dispute Resolution Services

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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* ("Act") for:

- an order requiring the landlords to complete emergency repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords (male and female) and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 40 minutes.

The male landlord stated that both landlords own the rental unit. He confirmed the rental unit address during this hearing. The male landlord and the male tenant provided their email addresses for me to send a copy of this decision to them after this hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The two landlords and the two tenants all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. They had an opportunity to ask questions. They did not make any accommodation requests. They did not want to settle this application, after being provided an opportunity to do so.

Preliminary Issue – Service of Documents and Late Evidence

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The tenants filed this application on November 1, 2021 and a notice of hearing was issued to them by the RTB on November 3, 2021. The tenants were required to serve that notice, the application, and all other required evidence in one package to each landlord, within one day of receiving the documents from the RTB, as per RTB *Rule* 10.3.

The tenants confirmed that they received the above documents from the RTB on November 3, 2021. They stated that they served the male landlord only with one copy of the above documents on November 4, 2021. The male landlord confirmed personal receipt on November 4, 2021. He claimed that he did not have sufficient time to review the tenants' documents and provide all of the landlords' evidence, including photographs for this hearing, which occurred on November 9, 2021. He explained that the landlords were not prepared to proceed with this hearing.

The male landlord stated that the female landlord did not receive a separate copy of the above documents from the tenants. He said that she is a co-owner and landlord of the rental unit. He maintained that he told the tenants to serve her with a copy of their application, but they failed to do so.

The tenants confirmed that they did not serve the female landlord with a separate copy of the above documents. They said that they were waiting for the landlords to come over for an inspection, but it got cancelled. They stated that they did not want to go to the landlords' house at night. They claimed that they tried to serve the female landlord in person, but the male landlord refused. The male landlord said that he did not refuse service, he told the tenants that the female landlord had health issues.

The tenants confirmed that they repeatedly called the RTB on November 3, 4, and 5, and spoke to different information officers regarding service of documents and the hearing procedure. They said that they were informed by the RTB to serve their documents to the landlords in person by November 4, which was within one day of November 3, due to the expedited hearing date on November 9. They stated that they were informed by the RTB that their application could be dismissed for failure to serve documents properly, particularly when they told the RTB that they did not serve the female landlord in person, but they only served the male landlord in person.

The tenants further confirmed that they uploaded evidence to the RTB online system on November 1, 2 and 5. Rule 10.2 of the RTB *Rules* requires the tenants to submit all of their evidence together with their application, to the RTB. The tenants' application was filed on November 1, 2021. I informed the tenants that the evidence submitted by them on November 2 and 5 was late.

The tenants confirmed that their request for emergency repairs related to the primary heating system. They maintained that they had proper working baseboard heaters in the rental unit but not the two wood stoves and fireplace. The landlords confirmed that the tenants had a proper working primary heating system, which was the baseboard heaters. He explained that the wood stoves related to a secondary heating system.

I notified the tenants that an application for emergency repairs pursuant to section 33(c)(iii) of the *Act*, was for a primary heating system, not a secondary one. I informed them that I was not making a decision on the merits of their application, but an urgent expedited hearing related to emergency repairs, had to qualify under section 33 of the *Act*. They confirmed their understanding of same.

I informed the tenants that their application was dismissed with leave to reapply, except for the filing fee. I informed them that the female landlord was not served with a separate copy of their application, as required by section 89 of the *Act* and Rule 10.3 of the RTB *Rules*. I notified them that the male landlord did not have adequate time to prepare and submit evidence for this hearing, given that he was only served on November 4 and this hearing occurred on November 9. I informed them that some of their evidence was submitted late to the RTB, contrary to Rule 10.2 of the RTB *Rules*. I notified them that their urgent and expedited request for emergency repairs may not be related to the primary heating system, as required by section 33 of the *Act*. The tenants confirmed their understanding of same.

I notified the tenants that they could file a new application, pay another filing fee, and pursue their claim in the future, if they want to pursue this matter further. They confirmed their understanding of same.

Conclusion

The tenants' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the tenants' application is dismissed with 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: November 09, 2021

Residential Tenancy Branch