



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vantage West Realty
and [tenant name suppressed to protect privacy]

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 cost of their filing fee.

The Tenants, B.D. and C.D., and a property manager for the Landlord, T.G. ("Agent"), 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 Agent 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these 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.

Issues to be Decided

- Should the Landlord be Ordered to complete Emergency Repairs, and if so, what repairs?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on July 7, 2021, and runs to July 30, 2022, and then operates on a month-to-month basis, with a monthly rent of \$3,270.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$1,600.00, and a pet damage deposit of \$1,600.00.

The Tenant testified that the emergency repairs they seek, are as follows:

There's two things: an open, damaged area outside of . . . There's outside access to the fuse box inside the building. And the second is there's a porta-potty in my driveway, because of the repairs that have been ongoing for last five months.

I asked the Tenant how these are emergencies, pursuant to the Act, and they said:

There is an open side of the fuse box. It's cut into the wall where the meter goes into the house, because you can physically see the fuse box – it's exposed to snow, rain, mice. It's been that way for the last five months. Late last week the company sent a handyman to put some spray foam in the hole.

The porta-potty is in my driveway. They are doing renovations to the carriage home in the back. I have grand kids that live in that house.

The Agent said:

Everything he said is correct. The hole was cut inside of the house to do work on the meter. I'm not sure if it was the general contractor or [the gas company] that did that, but no repair has been completed. The Tenant did request it to get fixed, and it took a very long time to happen. We put the spray foam in, so animals

can't get in, and water and wind. I know that that's done, and a plan forward to finish the repair with poly and things like that.

Toilet. If you say a month, that's what it's been. Not sure if it's still there? [Tenant confirmed that it is still there].

I believe that the reason why the contractor put it there – they needed it where they could access it out. They couldn't put it in another spot on a property. The only other spot is the front yard or the driveway to the back. The driveway concrete was just poured. Once the driveway is cured, it could be moved to the back of the property. As soon as it's able to be moved, I'll tell the owner that it has to be moved.

I asked the Tenants how they feel about the Agent's proposal, and they said:

My issue's not with the property management company. This consistent issue of doing whatever the contractor or owner chooses to do – without asking or permission. That hole was stuck in there because they're using my power to power whatever they need to do to the carriage home. I was told that a second meter was put in, but they still use my power, they've never hooked the second meter up. There is a complete lack of respect for the Tenants who are paying the rent in this house. There was no permission to park a toilet ... the amount of transients using this toilet is embarrassing. I pay \$3,270.00 a month for this and there's a toilet in front of my house. It's not [the Agent's] fault, it's fully on the owner. There is second arbitration for March for all the damages I've had to put up with.

The Agent said:

Re the toilet and people using it. Yeah, I found out about it from [B.D.]. There was not notice given to me from the owner about this, either. Same with the power disconnect. There is a pattern that things just happen to accommodate the construction without any consideration to [the Tenant] and his family.

Power – a second hearing – the power thing is a part of the second hearing. It's not in the hearing notes for this one. For the toilet, it just got slammed down one day. The meter hole just got cut one day I have asked the owner to move the toilet and messaged the owner several times. It wasn't until they filed for this....

The general contractor is just hiring trades, and they reply back that we are told we are allowed to park here or do what they want. There is a complete lack of privacy for [the Tenant] and his family for this parcel. The land size is not great. There's no challenge with what [the Tenant's] doing. The toilet and the trades' parking in the driveway, blocking him from peaceful quiet enjoyment.

I submitted some stuff: a copy of the advertisement and the tenancy agreement, and the tenancy agreement says that house construction is happening in the back yard. . . . Same with the advertisement. It stated that there's a carriage house in the backyard, that construction will have to be tolerated. So there was some notice of it, but no note or comment about the extent of what the nuisance was ongoing to be like.

I asked the Tenants how and when he called the Landlord to have him make the repairs, and the Tenant said:

I think it goes back quite a ways - a few months back - three to four months back. I wasn't aware of how serious it was until I realized where my fuse box was.

These texts include communications between the Parties on these points; however, the texts are not dated [texts reproduced as written]:

Agent to Tenant on "Tuesday":

Hello [Tenant]! I have spoken with the owner of the property. He says he has talked to the general contractor many times, but the GC is hiring different trades and the communication is not working its way down to the trades to follow the rules... The owner apologizes for the challenges..

He shares that if the conditions at the property are too difficult there, he says you can give notice to move even while in your lease agreement. He shares that he does not want to make you stay there even though you signed a lease.

If you give notice, you will not be penalized for severing contract, as he has given you permission to leave anytime. Let me know what you think.. if you guys are tired of the work there and want to move out, please let me know...

I'm free to talk anytime if you would like.
Thanks,

Tenant to Agent on "Tuesday":

Afternoon,

That is simply a way for the owner to say he is not prepared to deal with it. Why should I incur the cost of finding another place and paying for more moving costs, etc. This is also perceived as a form of a threat. Don't like it, move. I will file for arbitration and he can figure it out then. On top of that I am going to file a lawsuit for damages. This guy is a piece of work. Now it's going to cost him.

You will be notified of arbitration as your the property manager.

Thank you.

The Tenant submitted photographs of the side of a house with a hole in the outside wall beneath a utilities meter. The Tenant said that the fuse box is located on the inside of the residential property near the hole, and that when he opens the fuse box he can see outside through this hole.

In the hearing, the Agent said:

Reading through a text message thread – long enough that I don't remember how far back it goes. When [the Tenant] moved in, there was talk of the meter going in soon to stop using the power out of this house. He's texted, he's emailed, there's been lots of time to fix the wall and move the potty.

The Tenant said: "July 30 is when I had texted him about our power being cut to the meter."

The Agent said:

Yes, July 30. [The Tenant] sent a photo – it was the end of July/beginning August when that hole was cut. The porta-potty has been there about 30 days now. He texted me November 16 about the toilet - on November 4 it's there. There's been lots of pictures and communication with me.

I asked the Tenants what they would like the Landlord to do, and they said:

Fix the hole properly and get the toilet out of my front yard. I understand that

the cement's got to cure, but get it out – a complete lack of respect. You have to see it. I agree they put foam in there, but it is not a fix. My concern is that it is left for five months. If rain or snow gets in there, that could have started a fire. This is nothing to do with [the Agent]. This is the owner's complete lack of respect. He would have come to look at it himself, if he did. Everything is about this carriage home.

The Agent said:

The hole will be fixed properly in the coming weeks. I'll just get it done even if . . . I'm supportive of [the Tenants] 100%. I have to work with the rules – it gives me implied authority to just do it. I don't need consent to fix a leak.

I asked the Agent about the porta-potty, and he said: "I'm going to reach out to the owner, and tell him that I was told by the arbitrator that that has to go. I'll use it as leverage to make it happen. It's not an issue; they should install a toilet in the [carriage] house and use that."

Analysis

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

Section 33 of the Act sets out what "emergency repairs" means. It says that emergency repairs are "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property." The Act also states that emergency repairs 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.

Landlords' and tenants' rights and obligations for repairs are set out in sections 32 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

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.

The Agent said: "There is a pattern that things just happen to accommodate the construction without any consideration to [the Tenant] and his family . . . There's no challenge with what [the Tenant's] doing. The toilet and the trades parking in the driveway, blocking him from peaceful quiet enjoyment."

I find that the Landlord was notified of the hole in the wall in the wall by texts to the Agent in July 2021 or five months prior to the hearing. I find that the Landlord did not initiate a repair to this hole in the wall until shortly before the hearing on December 17, 2021. I find that the need to repair the hole properly is urgent, necessary for the health or safety of the Tenants, and for the preservation or use of residential property.

I find that the Landlord has been unreasonable in the amount of time he has taken to have this necessary repair completed. I find that the repair of the wall is necessary to make the rental unit suitable for occupation by the Tenant and for the preservation of the residential property.

I Order the Landlord, at their own cost, to have the hole in the rental unit repaired by a licensed professional by January 7, 2022. I find that this is necessary to maintain the structure and integrity of the residential property, as it could lead to major leaks of rain, and access for rodents into the home.

I find that the porta-potty is a nuisance and a danger to the Tenants, in that it encourages homeless people to be on the property to use the toilet, thereby creating a potential danger and lack of privacy on the property to the Tenants, which includes the Landlord's grandchildren. I find that the Tenants have put up with the porta-potty in their driveway for long enough and that it is a danger, a nuisance, and it detracts from the Tenants quiet enjoyment of the property, guaranteed to a Tenant pursuant to section 28 of the Act.

I Order the Landlord to remove the porta-potty from the residential property as soon as possible, and by January 7, 2022 at the latest, pursuant to sections 28 and 33 of the Act.

If the Landlord fails to comply with either of these Orders, I authorize the Tenants to reduce their rent by **\$250.00** per month until the Landlord complies with both Orders.

As the Tenants are successful in this Application, I award them with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act. The Tenants are **authorized to decrease one upcoming rental payment by \$100.00** in complete satisfaction of this award.

Conclusion

The Tenants are successful in their Application for emergency repairs. The Landlord breached sections 28 and 33 of the Act by leaving a hole in the outside wall of the residential property for over five months, and for leaving a porta-potty in the driveway for at least a month.

The Landlord is **Ordered** to have the hole filled in by a licensed professional by at least January 7, 2022.

The Landlord is **Ordered** to have the porta-potty removed from the residential property by January 7, 2022.

The Tenant is also awarded recovery of the **\$100.00** Application filing fee and is authorized to **deduct \$100.00 from one upcoming rental payment** in 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: December 21, 2021

Residential Tenancy Branch