



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This expedited hearing dealt with the tenant's application pursuant to section 33 of the *Residential Tenancy Act* (the "Act") for an order to the landlord to make emergency repairs to the rental unit.

The landlord did not attend this hearing which lasted approximately 25 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended with the assistance of an advocate and they were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenant testified that they served the landlord with the notice of application and evidence by registered mail sent to the address at which the landlord resides or carries on business as a landlord on November 26, 2021. The tenant submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on December 1, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Should the landlord be ordered to make emergency repairs to the rental unit?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This periodic tenancy began on April 1, 2020 with the named individual respondent as the landlord. The monthly rent is \$1,450.00 payable on the first of each month. A security deposit of \$725.00 was collected at the start of the tenancy and is still held by the landlord.

A copy of the signed tenancy agreement was submitted into evidence. The named respondent is listed as the landlord on the document and there is no indication that they are acting as agent for any other entity. There have been multiple previous disputes in regard to this tenancy under the file numbers on the first page of this decision.

The tenant submits that the heating system for the rental unit is not functioning and fails to regulate the temperature inside the suite. The tenant has issued multiple correspondence to the landlord requesting repairs be done from April 8, 2021 onwards. Representative samples of some of the requests sent by the tenant and their advocate were submitted into evidence.

The tenant says the heating system has completely ceased functioning on April 8, 2021 and the landlord has taken no steps to investigate or rectify this issue. The tenant further submits that there are major leaks in the roof of the rental unit causing rainwater to collect and leak into the suite and that there are damaged pipes in the kitchen causing intermittent pooling of water.

The tenant seeks emergency repairs be completed to rectify these issues as the exterior winter temperature makes the lack of proper heating an urgent issue that poses a risk to the health and safety of the tenant and their family members residing within the rental unit.

Analysis

Section 33 of the *Act* describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

In the present circumstances I am satisfied that the issues described by the tenant fall under the definition of emergency repairs. I find that the malfunctioning primary heating system, the major leaks in the roof of the rental property and the kitchen plumbing fixtures are all urgent issues necessary for the health and safety of the occupants of the rental unit especially during cold and rainy winter months.

I am satisfied with the undisputed testimony of the tenant and their previous correspondence documenting the issues that there are deficiencies in the rental unit that are in need of major repairs. The tenant provided cogent, consistent and detailed testimony describing the condition of the rental unit and their observations of the issues.

I therefore find it appropriate to issue an order that the landlord perform the following repairs:

1. Replace or repair the furnace of the rental unit to ensure that the rental unit is properly heated.
2. Repair the leaks throughout the roof of the rental unit so that no further water ingress occurs in the rental unit.
3. Replace or repair the kitchen sink system so as to prevent any blockages, water leakages or pooling.

I order that the repairs be completed by December 31, 2021. Should the landlord fail to complete the above repairs by that time the tenant is at liberty, pursuant to section 33(3) of the *Act*, to have emergency repairs made and, pursuant to sections 33(5) and (7), deduct the amounts paid for such repairs from the monthly rent.

While the tenant made an application at the hearing seeking a reduction in the amount of the monthly rent due to the loss in the value of the tenancy until the emergency repairs are completed, I find that it would be contrary to the principles of procedural fairness to allow the amendment. I find that adding a new head of claim which has not been served on the landlord in accordance with Residential Tenancy Rule of Procedure 4.6 would be unfairly prejudicial to the landlord.

I further take guidance from Residential Tenancy Policy Guideline 51 which provides that an expedited hearing cannot be combined with another claim and that an application for issues such as monetary awards are not appropriate for the expedited hearing process.

Therefore, the tenant is at liberty to file an application for retroactive reduction in the value of the rent to date for the deficiencies, and should the landlord fail to make the repairs ordered above by the date ordered the tenant may make an application for a monetary award for that reduction in the value of the tenancy agreement.

In the present matter, as articulated above, the tenant is authorized to make deductions from the monthly rent for the cost of any emergency repairs they arrange.

There appears to be some confusion about the identity of the landlord based on correspondence stating that the named respondent landlord will no longer be associated with the dispute address. The named respondent is the only individual named on the tenancy agreement and there is no indication that they are acting as agent for a corporate landlord or another party.

Section 1 of the *Act* defines a landlord as:

- (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;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this

I am satisfied that the named respondent is the landlord for this tenancy and the appropriate party to be named. I further note that if there has been a change in the landlord the present order applies to any heirs, assigns, representatives or successors of the named respondent.

Conclusion

The landlord is ordered to make the emergency repairs listed above by December 31, 2021.

Should the repairs not be completed by that date the tenant may arrange for repairs and deduct the cost of any repairs from their monthly rent payments.

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: December 20, 2021

Residential Tenancy Branch