



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This expedited hearing was scheduled in response to the tenant's application for emergency repair orders.

The tenant and three landlords appeared for the hearing. The parties were affirmed. The tenant was also assisted by his lawyer. The tenant also had a witness appear at the commencement of the hearing. The witness was excluded with instructions to wait to be called. The witness was not called during the remainder of the hearing.

I confirmed the landlords received the tenant's Application for Dispute Resolution and evidence. I heard the tenant's evidence was on a USB stick but the landlords did not take issue with accessing the evidence on a USB stick.

I heard the landlords dropped their evidence off to the tenant by leaving a USB stick in the tenant's mailbox on January 18, 2022. The tenant confirmed receipt of it on January 19, 2022. Although the landlord's evidence was served late, the tenant stated he had reviewed the and was agreeable to its admittance.

In light of the above, I admitted the evidence of both parties without objection of any party, and I have considered it in making my decision.

The hearing process was explained to the parties and the parties were given an opportunity to ask questions.

It is recognized that the tenant raised multiple issues and the parties provided a considerable amount of evidence; however, not all of it was addressed in the hearing or in this decision. Given this hearing was expedited to address the need for emergency repairs, and the limited amount of allotted hearing time, I limited the scope of the

hearing to deal with the flooding issue only so as to avoid an adjournment which would prolong the dispute resolution process and inhibit a timely resolution.

Issue(s) to be Decided

Is it necessary and appropriate to issue orders with respect to emergency repairs?

Background and Evidence

The tenancy started in July 2010 and the current landlords inherited the tenancy when they purchased the property in December 2020. The currently monthly rent is \$1893.00 payable on the first day of every month.

The rental unit was described as being a two level house including a basement, likely constructed in the early 1970's. The tenant rents the entire house.

With an extreme weather event that cause prolonged intensive rainfall, the basement flooded starting on November 14, 2021 and flooded three times in late November 2021. The sewer contaminated water back flowed up a plumbing pipe located in the floor of the basement.

A restoration company attended the rental unit between November 15, 2021 through December 3, 2021 to perform an emergency service at a cost to the landlords of approximately \$5700.00. The emergency services performed by the restoration company, as seen on the invoice, involved water extraction, removal of flooring, the provision of three dehumidifiers and application of anti-microbial to the surface area.

Also, on December 3, 2021 the City installed a "check valve" on the city's side of the property line. The check valve installed by the city was evidently insufficient to stop water from infiltrating the basement as the water came up through the pipe in the floor again on January 12, 2022. The landlords attended the property on January 16, 2022 to perform an inspection.

The tenant submits that the emergency services performed thus far are insufficient to address the on-going humidity and mould growth as some building materials are still wet and the humidity levels are high. The wet building materials need to be removed or dried, depending on the material. Also, the surfaces require sanitization, including scrubbing, drying and application of anti-microbial. More specifically, the tenant submits that there is still wet insulation and drywall in the basement that was not removed. Also,

the bathroom vanity was not removed and the shower stall and toilet were not lifted to clean underneath these fixtures.

The landlords acknowledged that further remediation efforts are required and that the wet insulation and drywall needs to be removed. The landlords are also in agreement the bathroom vanity needs to be removed. The landlords were agreeable to further investigating the need to clean under the shower stall. The landlords requested 30 days to accomplish these tasks. The tenant requested this work be done by the end of this week and until the work is done, he requires three dehumidifiers. The landlords were agreeable to providing the tenant with three dehumidifiers within 2 – 3 days.

With respect to the repeated water ingress through the pipe in the floor, the tenant stated that the city has been trying to reach the owners to discuss further measures to mitigate water ingress through the pipe. The landlords were of the position that the water ingress is the fault of the city and this may take time to resolve; however, the landlords indicated they were agreeable to investigating installation of another check valve on the property to mitigate the chances of another backflow through the pipe.

The landlords submitted that in addition to paying for the emergency response and compensating the tenant with a 50% rent reduction for December 2021, they also applied for a renovation permit so as to restore the basement. However, part of the issue in addressing the water damage is that the tenant has been limiting entry to only two people at a time. The tenant acknowledged he did this and stated his reason was due to Covid.

The landlords also submitted that the tenant has the basement packed with his personal property and this inhibits the landlord's ability to inspect and take action. The tenant also confronted them about his privacy rights when they were at the property on January 16, 2022. The tenant acknowledged that he has possessions in the basement that were contaminated by the sewage water but that he was told by his insurance company to not touch anything until they approved it. The tenant stated that as of January 24, 2022 his insurance company gave him the clearance to dispose of his personal possessions as they have been "written off". The tenant stated that he will proceed to remove his personal property and the few pieces he intends to keep will be out of the way of the for the landlords to inspect and make repairs.

Considering the tenant is seeking repairs and the landlords are agreeable to making further repairs, I discussed with the parties the best way for the landlords to gain entry

to the rental unit. The tenant and the landlords were agreeable to the landlord requesting the tenant's consent to enter by way of a telephone call or text message.

Analysis

Section 33 of the Act defines an emergency repair, as follows:

- 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
 - (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.

Having heard undisputed evidence that there was sewage contaminated water flooding in the basement in late November 2021 and again in January 2022 by way of a pipe in the basement floor, I accept that emergency repairs were required and are still required, especially since there remains wet building elements in the basement and the check valve installed by the city on the city's property was not effective at stopping the water ingress.

It is also undisputed that the tenant has personal property in the basement still that was also contaminated by the sewer water and I am of the view these materials are likely contributing to the mould growth and humidity in the house. The tenant indicated his insurance company is "writing off" his possessions and I find it is the tenant's responsibility to remove these materials from the house as soon as possible to mitigate mould growth.

With a view to motivating the parties to continue to progress with remediation and repairs, and considering the submissions of both parties during the hearing, **I order the following:**

1. The tenant must immediately commence removal of his personal possessions that were contaminated by sewer water from the house and ensure any remaining items in the basement are not inhibiting the landlord's ability to inspect and perform repairs in the basement. The deadline for accomplishing this is 7 days from today's date.
2. The landlords shall deliver to the tenant three dehumidifiers within 2 days of today's date and the tenant shall operate them to reduce the humidity in the rental unit.
3. The landlords must have the wet insulation, bottom portion of drywall, bathroom vanity and any other obviously porous building elements and/or fixtures removed from the basement. Any elements that were or are wet or were touching the wet materials but are not removable, such as wood studs or concrete, are to be cleaned and sprayed with an anti-microbial. The landlords shall lift and clean under the non-porous fixtures such as the shower stall and toilet. The deadline for doing this is 14 days from today's date.
4. The landlords shall investigate, including contacting the city, what further action is needed on the property to mitigate the likelihood of another back flow of water into the basement through the pipe that has been the entry point for the back flow. The deadline for doing this is 14 days.
5. Where it is determined that further action is needed to mitigate back-flow into the basement, such as installing a check valve or sump pump on the property, the landlord shall undertake this action within as soon as possible and not dependent on reaching a resolution with the city.
6. The tenant must not interfere with the landlord's efforts to perform further remediation and repairs by limiting the number of people in the basement. If the tenant is concerned about the risk of Covid, the tenant need not be present when the landlords or their contractors are performing the inspections and work.
7. In keeping with the parties' agreement, the landlord's entry into the basement may be accomplished by gaining the tenant's consent by way of a phone call or text message. The tenant must not unreasonably withhold consent and shall make efforts to be accommodating.

It is expected that following the remediation and emergency repairs the landlord will proceed to renovate the basement so as to reinstall or install new building elements to

return the rental unit to a state and condition similar to that before the flooding (i.e.: reinstall or install new flooring, walls, trim, fixtures, and the like).

Should either of the parties fail to comply with the orders above or issues arise that were not addressed in this decision, the parties may seek further dispute resolution.

The tenant requested recovery of the filing fee from the landlords. I have found more work is needed by both parties to remove the wet items from the rental unit. As such, I award the tenant recovery of 50% of the filing fee, or \$50.00, from the landlords. The tenant is authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlords must consider the rent paid in full.

Conclusion

I have issued orders to both parties by way of this decision with a view to facilitating remediation and repairs in the rental unit associated to flooding and water damage.

The tenant is awarded recovery of \$50.00 for the filing fee and is authorized to deduct \$50.00 from a subsequent month's rent payment in satisfaction of this award.

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: January 26, 2022

Residential Tenancy Branch