Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ERP, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This expedited hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order for emergency repairs to be done to the rental unit pursuant to section 33; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented by an agent, property manager, SM ("landlord"). The landlord acknowledged service of the tenant's Notice of Expedited Hearing and stated he had no concerns with timely service of documents.

The tenant denied service of the landlord's evidence. The landlord testified that he sent each of the named applicant/tenants with their own set of evidence by registered mail on March 9, 2022 and provided tracking numbers for the mailings. The landlord's evidence was sent to the tenants at their residence and the tracking numbers are recorded on the cover page of this decision.

The tenant testified that his mailbox was removed by the lower unit tenant. Since removal, the tenant has not tried to look for any mail and he does not check it regularly. The landlord testified that the lower unit tenant notified him that the upper tenants (the tenant/applicants in this case) took down the mailbox and put it in the recycling bin. The landlord testified that he reattached it to the wall outside the carport when he started managing the rental unit in mid-January, 2022.

Based on the above, I would reasonably anticipate that the tenant should expect the landlord would serve him with evidence in response to his application and would check for registered mail notifications. I deem the landlord's evidence sufficiently served upon the tenants five days after it was mailed by registered mail, on March 14, 2022, pursuant to sections 88 and 90 of the Act. I will use both the tenant's and the landlord's documentary evidence for this decision.

Preliminary Issues

The tenancy agreement states there are two landlords and a single tenant, KA. The property manager who appeared for the landlord acknowledged that the person named as landlord on the tenant's application for dispute resolution is in fact, the owner of the rental unit and the proper person to be named as landlord. For this hearing, the property manager appears as the landlord's agent.

The property manager ("landlord") testified that the tenancy agreement was signed in the landlord spot by the lower unit tenant who had the authority of the property owner to act as agent at the time. The property manager took over management of both rental units on January 15, 2022 and the lower unit tenant entered into a new tenancy agreement. The upper unit tenants did not.

Based on the facts before me, I find the second named landlord on the tenancy agreement is not a landlord and does not need to be served with the Notice of Expedited Hearing.

Issue(s) to be Decided

Should the landlord be ordered to perform emergency repairs?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenant lives in an upper unit of a single-family home with both an upper and lower unit.

The tenant gave the following testimony. In the summer of 2021, the lower unit tenant, the same person who signed the tenancy agreement with the tenant/applicant, did work on the patio of the upper unit. The patio is made of concrete covered by a material referred to a “Dura” by the tenant. A rubbery material, according to the tenant.

There is a carport beneath the patio. According to the tenant, there are leaks in the carport, describing it as tiny drops. After the winter, when the temperature dropped and ice melted, he saw the carport leaking profusely. He told the property manager on February 15th and told him the ceiling was sagging. The tenant filed his application for dispute resolution on February 18, 2022.

On March 7th, the landlord and a handyman showed up. The “Dura” was pulled up, off the floor and put beside the shed. The handyman exposed the concrete below the “Dura” making the situation worse. The tenant states the structure is unsound, and a fire hazard because water is coming out of a light fixture.

During the hearing, the tenant acknowledged the remedy he seeks from this hearing is a useable patio. He might have focussed on the carport but he really wants the patio fixed. The tenant then stated that the carport below is an integral part of the patio and it’s a structural hazard.

The landlord called TA, the “handyman” as his witness. TA testified that he has been in the construction trade and industry for the past 25 years, with the last 5 years working mostly with the landlord’s property manager company. The witness testified that the structure of the carport/patio is sound. It is made out of 2” x 8” studs with a 1.5” concrete slab on top of plywood, then covered with “Duradeck”. The witness testified that the vinyl Duradeck is deteriorating and that moisture is seeping through the vinyl and the concrete.

When he was called on to work on the patio/carport on March 7th, some wet drywall was removed. The witness testified that it was wet because the drywall was sandwiched between plywood and a joist with no room to breathe. He removed the vinyl siding on the soffit and the drywall strapped under that. There was no leaking after that.
The witness stated that he has been back to the property on 3 occasions since the March 7th attendance and there have been no leaks. He attended on March 11th, an

overcast day without rain and there were no leaks. He attended this past Monday, March 29th a rainy day, and there were no leaks.

The landlord gave the following testimony. There is no evidence of a need for emergency repairs. The day the tenant's video was taken, it's a "blue sky day". The landlord alleges the tenant may have created a false video as it wasn't raining that day. The landlord argues that the tenant has no background in construction and is incapable of assessing the structural soundness of the carport or the deck above it. He couldn't even name the product that provides the waterproof membrane on the patio deck.

The landlord directed my attention to pages 82 and 83 of his evidence package where the landlord has spent $476.00 to investigate the tenant's complaint and begin repairs by removing the Duradeck. The landlord testified that both he and the handyman were yelled at and harassed by the tenant when the were there to do the repairs because the tenant was upset he wasn't given 24 hours notice. The handyman was unable to complete the repairs due to the tenant's belligerent behaviour.

The landlord argues that the carport isn't even this tenant's space to use. It is for the exclusive use of the downstairs tenant and that tenant uses the carport as an outdoor living space. The carport is where the lower unit tenant accesses his rental unit, and the lower unit tenant has never found fault with the carport or complained about leaks.

Analysis

This hearing was scheduled as an expedited hearing under Rule 10 of the Residential Tenancy Branch Rules of Procedure. Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] states:

> *Ordinarily, the soonest an application for dispute resolution can be scheduled for a hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and to respond to it. However, there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit. The director has established an expedited hearing process under Rule 10 to deal with these cases.*
>
> *…*

Amending an Application for an Expedited Hearing

Except where required in the circumstances, an expedited hearing is not a way to bypass normal service and response time limits to get a quicker hearing. Therefore, once an application for an expedited hearing is made, it cannot be amended except at the hearing with the permission of the arbitrator.

This is to prevent applicants from "queue jumping", for example, by applying for emergency repairs and then amending the application to request repairs for the replacement of a fridge or oven which is not considered an emergency.

At an expedited hearing, an attempt to amend an expedited hearing application from a request for emergency repairs to regular repairs or from an early end to tenancy to a request for an order of possession for unpaid rent will almost always result in the arbitrator dismissing the application and the applicant having to start the application process over from the beginning.

Order for Emergency Repairs

Under section 33 of the RTA and section 27 of the MHPTA, emergency repairs are defined as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of property, and made for the purpose of repairing:

- *major leaks in pipes,*
- *major leaks in the roof (RTA only),*
- *damaged or blocked water or sewer pipes,*
- *damaged or blocked plumbing fixtures (RTA only),*
- *the primary heating system (RTA only),*
- *damaged or defective locks that give access to a rental unit (RTA only), or*
- *the electrical systems.*

Emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control. In some cases, tenants may perform emergency repairs themselves in accordance with section 33 of the RTA or section 27 of the MHPTA. If a tenant has performed emergency repairs and is seeking monetary compensation, they should apply for a monetary order, not emergency repairs.

The issue brought by the tenant related to small drips in the carport. I have viewed the drips on the video provided by the tenant and I do not find that the repair requested by the tenant falls into any of the categories for emergency repairs as outlined in section 33 of the Act. I find that the repairs sought by the tenant falls into the category of a regular repair under section 32 of the Act. I do not share the tenant's opinion that there are structural issues to be addressed. I find that there is no imminent danger to the health or safety of the tenant or for the preservation or use of property as alleged by the tenant.

The tenant did not dispute the landlord's testimony that the carport area was for the exclusive use of the lower unit tenant and that the lower unit tenant used it for an outdoor living space without complaint. As the tenant who filed this dispute doesn't even use the carport area, I find that this tenant lacks the capability to bring on this dispute.

Further, I find that the nature of this application was to have his patio repaired, not to fix leaks under the carport. As the tenant testified, what he really wants from this hearing is a "useable patio". Fixing the carport goes "hand in hand" with fixing the patio, as stated by the tenant.

I find the tenant filed an application for an expedited hearing to achieve an order for a "useable patio", not for an emergency repair of any of the prescribed issues as outlined in section 33 of the Act. I do not find a major leak to pipes, major leak to the roof, or damaged or blocked water, sewer or plumbing. I dismiss the tenant's application for emergency repairs as the nature of the repairs sought do not fall under section 33 of the Act.

Conclusion

This application for dispute resolution is dismissed without 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: April 01, 2022

Residential Tenancy Branch