Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP FFT

Introduction

The tenants applied for an order for emergency repairs pursuant to sections 33 and 62 of the *Residential Tenancy Act* ("Act"). In addition, they sought to recover the cost of the application filing fee under section 72 of the Act.

Both parties (one tenant and two landlords) attended the hearing on April 8, 2022. No service issues were raised (though the landlords remarked they only received a couple of photos from the tenants), the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

1. Are the tenants entitled to an order against the landlords for emergency repairs?
2. Are the tenants entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant oral and documentary evidence submitted by both the tenants and the landlords complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

At some point between January 28 and February 8, 2022, a burglar smashed, or kicked in, the tenants' door to their apartment. The burglar also likely used a crowbar in their effort to gain unlawful entry into the tenants' home.

Fortunately, the tenants were not home during the breaking and entering. Unfortunately, the burglar made off with the tenants' jewelry, an expensive watch collection, and various designer bags. There are active police investigations currently underway.

In this application, the tenants seek an order for emergency repairs on the basis that, despite repairs having been made, (1) the door is not secure, and (2) the damage to the door resulted in a hole through which passersby in the common area hallway can look into the rental unit. The door, the tenants contend, needs to be made more secure and something must be done about the hole. It is worth noting that during the tenant's testimony he at first explained that the door locks (though the repair is "super cheap"). Later in the hearing, though, the tenant testified that the door is not secure.

The tenants contacted the landlords about the incident, including the damaged door, and the landlords showed up the next morning. The concierge and the strata were contacted, and a repairperson attended. The repairperson made a temporary repair to the door, as the door had severe damage, including damage to the wood around the lock and the strike plate. The landlords testified that the repairperson was "able to fix up the wood a little bit to ensure it could still be locked." The door is, in their words, "secure enough." The landlords cannot, they added, do anything further at this point.

A few days later, the property management company attended to conduct an assessment and more permanent repair of the door. They installed a completely brand-new lock set including a new strike plate. Submitted into evidence by the landlords is a video taken by the repairperson which depicts the repaired and operational nature of the door and the lock. The tenant (M.G.) was present during this videotaping. As a result of this repair, the landlords' position is that the door and lock are now "extremely secure as if [it] were a brand-new door." Nevertheless, the landlords submitted that the tenant still "tried to make a fuss about it."

Regarding the hole, the landlords testified that it is very small. So small, in fact, that if one stuck the sharpened end of pencil into the hole that the tip of that pencil would unlikely penetrate more than about ¼ of an inch into the hole. "Nothing can be seen" through the hole at a distance if walking by the door, and there is "no security risk," the landlords added. (They briefly said that the hole could easily be covered with tape.)

The landlords gave evidence that while they made every reasonable effort to repair the door in a timely manner, and that the door is in fact secure, they pointed out that the door itself is considered common property. And common property in the building falls under the responsibility and purview of the strata corporation.

While the door has been repaired, the strata and property management company have subsequently decided to pay for a new door. An order has been placed and new door should arrive sometime this summer.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Under section 62(3) of the Act an arbitrator may make "any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act [. . .]"

In this dispute, the tenants seek such an order for the purposes of having the landlords comply with section 33 of the Act. Section 33 of the Act pertains to what are known as "emergency repairs." Subsection 33(1) sets out the definition of emergency repairs for the purposes of the Act, and it states that "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 [. . .] (iv) damaged or defective locks that give access to a rental unit,

In this dispute, I turn first to the hole, which may be dealt with rather perfunctory. There is no disagreement between the parties that there is a hole in the door (caused by the damage). The tenant claims that someone could look through the hole and into the rental unit; the landlords argue that one would need to basically put their eyeball right up to the hole in order to look through the hole. (They both admitted, however, that they have not actually attempted to test the tenant's theory in what could be seen through the hole.) The hole itself is quite small, from what I can gather.

Ultimately, though, the issue of the hole is a matter concerning the tenants' privacy, and unrelated to any health or safety issues contemplated by subsection 33(1)(b) of the Act. Further, the existence of the hole is unrelated, and unconnected, to either a damaged or defective lock, as contemplated by subsection 33(1)(c)(iv) of the Act.

Turning now to the door and the lock, the tenant essentially admitted at the start of the hearing that while the repairs made are "super cheap," the door nevertheless locks and is otherwise secure. He later testified the door is unsecure. Despite the tenants' testimony and evidence, I am not persuaded that the door – and more specifically, the lock in that door – is in a state that requires repairs.

It is my finding of fact that the lock (and strike plates) is fully functioning, and as such their condition meets the requirement of ensuring that neither the health or safety of the tenants (or, for the preservation and use of the residential property) are at risk.

For these reasons, then, I decline to make any order under section 62 of the Act. The landlords have, I conclude, met their legal obligation as landlords under the Act.

Given the above, I decline to award the tenants any compensation related to the cost of the filing fee, under section 72 of the Act and this aspect of their claim is dismissed.

Conclusion

The application is dismissed without leave to reapply.

This decision is made on delegated authority pursuant to section 9.1(1) of the Act.

Dated: April 8, 2022

Residential Tenancy Branch