



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on March 28, 2022 seeking an order that the Landlord make emergency repairs for health or safety reasons. Additionally, they seek reimbursement of the Application filing fee.

The matter was scheduled as an expedited hearing and proceeded pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 13, 2022. I explained the hearing process and provided both parties the opportunity to ask questions.

At the outset of the hearing, both the Tenant and the Landlord confirmed they received the prepared evidence of the Tenant. Reciprocally, the Tenant confirmed they received the Landlord’s evidence. On this basis, the hearing proceeded as scheduled.

Issue(s) to be Decided

Is the Landlord obligated by s. 32 of the *Act* to make emergency repairs to the rental unit as requested by the Tenant?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant presented pages from the tenancy agreement showing the tenancy started on September 1, 2021; however, both parties in the hearing agreed the tenancy started two years

prior on September 1, 2019. The rent of \$6,500 is split among a number of tenants residing in the Landlord's property.

In the hearing, the Tenant described how on March 26, 2022 one of five toilets within the house blocked on the second floor, and they were unable to stop the water flowing due to an ineffective shut-off valve. On their Application, they described "raw sewage seeping through the floor, into the kitchen below causing water damage." The Tenant filed their Application 2 days after this event; therefore, on that form they indicated the need for a plumber to attend to repair the toilet.

In the hearing they described a faulty flush after their plunging. This caused overflow, leading to water leaking through to ceiling lighting fixtures in the downstairs living room. In the midst of this, the Tenant scrambled to find the lowest-cost plumber available, and that plumber visited on that occasion to inspect and repair the situation. A video provided by the Tenant shows the plumber describing the hardware – in particular, the filling valve – not working properly, and the switch-off valve not being able to switch off properly.

The Tenant described the ensuing events as follows:

- the following day, the Landlord was upset, accusing the Tenant of throwing improper material into the toilet, causing the overflow
- the emergency had abated by that point; however, the toilet was still not working properly
- unable to resolve the situation amicably, the Tenant informed the Landlord they would bring the matter to the Residential Tenancy Branch
- on April 1, the Landlord visited for a different reason; however, they inspected the toilet with their own plumber – this plumber adjusted the filling valve and got it working – prior to inspecting the shut-off valve, the Landlord exited and declared the matter concluded, taking the plumber with them
- from this point on, they stopped using that particular toilet because the shut-off valve was not adjusted properly; meanwhile, the Landlord set out either eviction or the amount of the plumber's urgent visit would be taken from the security deposit.

In response to what they heard in the hearing, and the Tenant's own submitted evidence, the Landlord stated:

- the images/videos submitted by the Tenant do not positively show leaking, neither on the floor of the washroom, nor the ceiling of the downstairs unit – what the Tenant

pointed to on the ceiling was residual needing to be done on the ceiling from water damage one year prior

- on their subsequent visit with their plumber on April 1, they found the side valve was okay – they visited again on April 7 and April 26 to confirm the toilet is still in operable use – the Tenant here simply stated they don't want to use the toilet
- the Landlord visits on a regular monthly basis to undertake maintenance at the house
- this particular toilet was replaced in 2019, so it was likely not caused by faulty hardware.

The Tenant responded to say they are only now looking to have the shut-off valve and the filling valve to be replaced. The new ones installed more recently by the Landlord are not working.

The Landlord responded to this to say that the toilet is in good working order, as they verified on each of their subsequent visits in April. Should the toilet malfunction, the Landlord will gladly address that issue and make repairs as necessary.

Analysis

The *Act* s. 32 sets out a landlord's obligations for repair to a rental unit. the "emergency repairs" as defined in s. 33 of the *Act*. This sets out that these are repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property.

Based on what the Tenant presented here, I am not satisfied that there is any issue ongoing, and the matter is certainly not of an urgent nature. There is no evidence of leaking into other units within the house that are of an urgent nature. Any repair required – and the immediate need is not proven -- is not of an urgent nature at this point.

There is no evidence to show the Landlord does not make regular checks on the property and performs maintenance or repairs as needed. They followed up on the issue at least two more times in April.

I am fully satisfied, as per the Landlord's statements, that should an issue arise with the normal usage of the toilet that they would repair as needed. This is not an instance of the Landlord ignoring the Tenant's requests for repairs; rather, I find the Landlord has addressed those concerns, and find there is no need for an immediate repair to the toilet. The Landlord's claim that they will repair as needed is true and genuine, without question or doubt.

Given that the repair was completed, and the toilet is currently functioning as needed minus evidence to the contrary, I find there is no obligation of the Landlord here to make a repair on an urgent basis.

For these reasons, I dismiss the Tenant's claim in its entirety, without leave to reapply. The Tenant is not entitled to reimbursement of the Application filing fee.

Conclusion

I dismiss the tenant's application for the landlord to make emergency repairs, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 13, 2022

Residential Tenancy Branch