



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order for emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called witness P.L., A.P., and E.L. who all affirmed to tell the truth.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision.

The tenant testified that he served the landlord with his application for dispute resolution and first evidence package in person on the day they were supposed to be served. The landlord testified that she received the above documents on May 11, 2022. The tenant's notice to dispute resolution materials were made available to the tenant on May 10, 2022. I find that the above documents were served on the landlord in accordance with section 88 and 89 of the *Act*.

The tenant testified that the landlord has mail delivered to the subject rental property and picks it up when she comes by. The tenant testified that he served the landlord with his second evidence package by leaving a copy of the evidence in the landlord's mailbox at the subject rental property on June 14, 2022. The landlord testified that she does not live at the subject rental property and has not received the tenant's second evidence package.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

Section 88 of the *Act* states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(j)by any other means of service provided for in the regulations.

I find that pursuant to Rule 10.2 of the *Rules*, the tenant was required to provide all their evidence to the landlord at the same time the landlord was served with the Application for dispute resolution. I find that this Rule was not complied with.

I find that the tenant did not serve the landlord with the late evidence in accordance with any of the subsections of section 88 of the *Act* as the landlord does not reside at the address at which the mail was left.

For failure to comply with Rule 10.2 and section 88 of the *Act*, I exclude the tenant's second evidence package from consideration.

Both parties agree that the landlord served the tenant with her two pages of evidence in person on February 17, 2022.

Rule 10.5 of the Residential Tenancy Branch Rules of Procedure states:

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

I find that the landlord's evidence was served on the tenant in accordance with Rule 10.5 and section 88(a) of the *Act* and is therefore accepted for consideration.

Issues to be Decided

1. Is the tenant entitled to an Order for emergency repairs, pursuant to section 33 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and is currently ongoing. Monthly rent in the amount of \$3,749.00 is payable on the first day of each month. A security deposit of \$1,800.00 was paid by the tenant to the landlord. Both parties agree that the tenant rents the upper portion of the house and that the landlord rents other levels of the house to other tenants. Both parties agree that there is one sewage tank and sump pump to deal with all the sewage from the subject rental house.

Both parties agree that the tenant filed a previous application for dispute resolution in which the tenant sought an order for emergency repairs relating to the rental unit sewage system. In the previous hearing the tenant stated that the issue was that the sewage liquid leaked out such that the ratio of liquid to solid was not adequate and therefore did not empty. In the previous hearing the tenant sought an Order for the landlord to pump out the tank.

The previous hearing first convened on May 28, 2021 and both parties consented to an adjournment pending the outcome of an inspection of the sewage system set for June 7, 2021. The hearing re-convened on July 12, 2021. In the reconvened hearing the tenant testified that the landlord pumped out the tank and that as long as the tank was regularly emptied, there were no issues in the rental unit. As there were no issues as of the date of the July 12, 2021 hearing, the tenant's claim was dismissed **with leave to reapply.**

The tenant testified that the landlord has not regularly emptied the tank and that the tank has not been pumped out this year and the problem has presented itself again. The tenant testified that when the tank is not routinely emptied sewage backs into the subject rental house and leaks through the sump pump access cover and into the backyard and salmon creek which runs beside the subject rental property.

The tenant testified that the landlord repeatedly replaces the sump pump but that because the tank is leaking and the liquid is draining out, the sump pump gets jammed with solid fecal matter and burns out. The tenant testified that the landlord has refused to repair or replace the septic tank which is the cause of all the problems.

The tenant entered into evidence a video of him pouring a tracer dye down a toilet in the subject rental property and other videos showing solid waste in the sump pump hole dyed green, and green sewage water leaching into the backyard and towards a nearby creek. The tenant testified that the videos were taken January 1, 2020 and that the issue persists.

The landlord testified that this issue has been fixed, no documentary evidence to support this testimony was entered into evidence.

The tenant entered into evidence a video of two inspectors from the subject rental City speaking to the landlord about the sewage issues. The tenant entered into evidence the business cards of the aforementioned inspectors. The landlord did not dispute that the people seen in the video with her are the inspectors described by the tenant. In the video the male inspector states:

Originally what happened here you, you lined, you were supposed to put concrete and line the tank because there was root infestation in there. The tank is broken.

The tenant testified that the video was taken December 23, 2021. This was not disputed by the landlord.

The landlord testified that the sewer tank was not cracked. The landlord called witness P.L. who testified that he is a plumber and that in a previous inspection, the sewage tank passed inspection and does not have any cracks. The landlord did not enter into evidence any documentary proof to establish that the sewage tank passed inspection and was not currently cracked or otherwise damaged.

Witness P.L. testified that the sewage tank is not the issue. Witness P.L. testified that the issue is that he keeps finding rags, hand wipes, metal and other items in the tank which clog up the sump pump. Witness P.L. testified that the debris clogging the sump pump is the problem.

The landlord testified that the tenant is intentionally throwing rags, hand wipes and other debris into the sump pit to damage the landlord's sump pump and that this is what is causing the sewage problems.

The tenant denied sabotaging the sewage system and testified that the landlord bribed witness P.L. to lie in this hearing. The tenant testified that he lives in the subject rental property and would not damage the sump pump as does not want to come into contact with raw sewage. The tenant testified that he just wants the landlord to fix the tank. The tenant testified that if the debris is being found in the tank it is coming from another unit, not his.

The tenant testified that in the last couple of days the landlord made a repair akin to putting the sump pump in a straw in the sewage tank which may prevent it from getting jammed and may solve the problem but that at this point he does not know if the fix will work. The tenant testified that he wants an Order for the landlord to fix the sewage tank which is the source of the problem.

The landlord entered into evidence an Inspection Worksheet signed by an official from the subject rental City which states that an inspection of the plumbing storm and sanitary rough-in occurred on June 15, 2022 and that the inspection failed. The general comments found on the inspection worksheet state:

1. Every sump that receives sewage shall be provide with a vent pipe that is connected to the top of the sump.
2. Where the sump is located in a driveway or parking area, the lid construction must be H-20 highway loading standard. Ensure that the lid of the sump is protected from vehicular weight.
3. Plumbing permit will not be approved unit an electrical permit is obtained from a licenced electrical contractor for the sanitary sump pump.

Please book out the inspection once the work is completed.

The only other documentary evidence submitted by the landlord was proof of a plumbing permit issued May 6, 2022 and a photograph which was not explained.

Analysis

Section 33 of the *Act* states:

- 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.

I find that septic leaks and back ups meet the section 33(1)(c)(ii) definition of an emergency repair.

I accept the tenant's undisputed testimony that the people speaking to the landlord about the septic system in the video entered into evidence are City inspectors and that this video was taken on December 23, 2021.

Residential Tenancy Branch Policy Guideline #1 states:

The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.

Based on the tenant's testimony, and the videos entered into evidence by the tenant, I find, on a balance of probabilities, that the septic tank at the subject rental property was damaged as of December 23, 2021. The male inspector clearly states that the tank is broken and that roots have "infested" the tank. I find that that the landlord has not proved, on a balance of probabilities, that the septic tank has been repaired or passed inspection since December 23, 2021. I find, on a balance of probabilities, that had the septic tank passed inspection, the landlord would have submitted the passed inspection as evidence.

The landlord did not submit any documentary evidence to prove that witness P.L. is an accredited plumber, or any documentary evidence to prove that the sump pump was clogged with anything other than solid fecal matter. I find that if the sump pump was clogged with matter other than fecal matter, the landlord has not proved, on a balance

of probabilities, that it was flushed or otherwise put in place by the tenant versus tenants in other units in the house. I find that the landlord has not proved, on a balance of probabilities that the tenant's negligence caused the sewage issues or that the sewage issues were not caused by the damaged sewage tank.

The inspection worksheet submitted by the landlord shows that the septic system failed inspection which occurred on June 15, 2022, just five days before this hearing.

Pursuant to section 33 of the *Act*, I Order the landlord to immediately make all repairs set out in the June 15, 2022 inspection worksheet as follows:

1. Install a vent pipe that is connected to the top of the sump.
2. Ensure sump lid construction is H-20 highway loading standard. Ensure that the lid of the sump is protected from vehicular weight.

If after the above repairs are made, the tenant reports to the landlord that sewage has again backed up into the subject rental property, I order the landlord to hire an independent accredited plumber to complete an inspection and report on the sewage tank and system. I order the landlord to give a copy of the report to the tenant. I order the plumber hired to complete the above inspection report be a plumber other than witness L.I. I order the landlord to make the repair(s) or replacement recommended in the report.

Pursuant to section 72 of the *Act*, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord. Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

I Order the landlord to:

1. Install a vent pipe that is connected to the top of the sump.
2. Ensure sump lid construction is H-20 highway loading standard. Ensure that the lid of the sump is protected from vehicular weight.
3. Hire an independent plumber to complete an inspection report on the septic tank and system if after the above repairs are made the tenant reports sewage

backing up in the subject rental property. Serve the tenant with a copy of the report. Complete repair(s) and or replacement recommend in the above report.

The tenant is entitled to deduct \$100.00 on one occasion from rent due to the landlord.

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: June 20, 2022

Residential Tenancy Branch