



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1918190 ALBERTA LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ERP**

Introduction

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

1. An Order for the Landlord to make emergency repairs for health or safety reasons pursuant to Section 33 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

This was a reconvened hearing as the Landlord's Agent said they did not have time to get all their evidence gathered for this emergency file. The Landlord's Agent uploaded the evidence they want to rely on in this matter.

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

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on July 21, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the

Landlord was deemed served with the NoDRP package five days after mailing them, on July 26, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issue to be Decided

1. Is the Tenant entitled to an Order for the Landlord to make emergency repairs for health or safety reasons?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on December 1, 2021. The fixed term ends on December 1, 2022, then the tenancy will continue on a month-to-month basis. Monthly rent is \$1,100.00 payable on the first day of each month. A security deposit of \$550.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant testified that when he first moved in, he received a Facebook message from the Landlord that said, *"When you settle down, please let me know, will book appointment one by one to fix water pump, water inspection, and fireplace"*

On June 13, 2022, the Tenant sent an email to the Landlord asking, *"Do you intend to do something about the well not meeting my house hold needs?"* The Landlord replied on June 14, 2022, *"I will take some time of this week"*. The Tenant wrote back a week later asking, *"Okay, it has been a week. I am running out of water in the cistern. What is your plan."*

The Tenant has so far paid the water delivery people \$1,100.00 to fill the cistern for his and his family's use. The Tenant stated it costs \$300.00 to fill the cistern. The Tenant is a person with disability, and his disability payments do not cover the cost of filling the cistern. The Tenant said, the water delivery people, who are also the people who fixed the water pump, have not been paid by the Landlord for filling the cistern. He said the water delivery people will not take business from the Landlord, but will take payment from the Tenant.

June 23, 2022, the Tenant sent a registered letter to the Landlord saying,

As recommended by the Landlord Tenant board I am writing to inform you that the well at my residence is only producing 5 to 10 gallons of water every 24 hours. This is not enough to supply the basic needs of my household. I am request that you find a more adequate water supply to meet my basic household needs by June 28, 2022 for my residence which your numbered company owns at [Address].

I informed you the pump was not supplying enough water June 8, 2022 and that you needed to address the water issue. On June 13, 2022 I requested an update on the situation with the water here. You said you would not fix the problem because your budget did not allow it. Then on the 14th you said you needed a week to think on it. As of today June 23, 2022 I only have a few hundred gallons of water, requiring me to purchase another load within the next week.

In my further conversation with the representatives at the Landlord Tenant board they informed me that you are required to provide me with potable water to meet my basic needs. They suggested that you paying to fill the cistern as I need is acceptable, but how you supply the water is up to you. I can also apply to have a rental reduction until the water supply is fixed. They implied you may have not rented the mobil home to me in good faith which voids any of the clauses pertaining to my basic rights as a tenant in the lease I signed. They encouraged me to submit an emergency repair claim on the 29th of June, 2022.

On June 23, 2022, the Landlord executed a Power of Attorney naming the Landlord's Agent who attended this hearing as the Landlord's Attorney. The document specifies that the Attorney's role is:

1. ***To Deal with the Tenants and Collect Rents:*** to which my attorney shall consider necessary or proper, in the care and management of my Lands and to receive and collect all rents that may be payable to [numbered company] in connection with my Lands, and in my name to give effectual receipts for that.
2. ***To Deal with BC Court or BC Residential Tenants Dispute Resolution Department.***
3. ***To Deal with my BC contractor or my BC maintenance contractor.***

4. Any and all ancillary matters relating to the above as may be necessary or advisable and which are so approved by my Attorney.

The Landlord's Agent pointed out that the tenancy agreement states:

13. MAINTENANCE COSTS AND MOVING OUT CLEANING COST

...

d) If the yearly maintenance fee is over 2500 dollars, this lease contract will be automatically stopped, the Tenants agreed to move out with 30 days notice, the property will be vacant for a year for renovation or Landlord move into the property.

Waiver and Release: I, [Tenant], fully understand the conditions of the property, which is located at [address]. That is no water, or no good quality water, no heater, no washer and dryer in the property.

The Landlord's Agent testified that the Landlord's expenses to date are:

ITEM	DATE	DESCRIPTION	AMOUNT
1	December 9, 2021	chimney inspection	\$63.00
2	January 26, 2022	water pump & 2000 Gallon water	\$547.59
3	March 22, 2022	remove a tree	\$577.50
4	April 2022-noted on reporting sheet	installed baseboard heaters, undated	\$2,730.00
5	May 30, 2022	remove fire stove	\$685.00

The Landlord's Agent's reporting did not include invoices for any of the above work that was done, and the installation of the baseboard heaters was undated.

The Tenant states that the Landlord cannot put a monetary cap on repairs. He argues this is unenforceable. The Tenant is seeking a water supply for household use, not for drinking. He states he buys bottled water for drinking.

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.

Landlords and Tenants share responsibilities for maintaining rental properties. Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Moreover, a landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Importantly, the Landlord cannot craft terms in their tenancy agreement that contract them out of the Act. Section 5 states:

This Act cannot be avoided

- 5** (1) *Landlords and tenants may not avoid or contract out of this Act or the regulations.*
- (2) *Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

Section 33 of the Act is the relevant part of the legislation dealing with emergency repairs. Emergency repairs are those that are urgent and necessary for the health or safety of anyone or for the preservation or use of the residential property. The well on this residential property has a bad history of running out of water; however, water is a basic right.

The Tenant does not require the provision of water for drinking, he buys bottled water for this. The Tenant does require emergency repairs or provision of water to fill the cistern so he and his family have water for daily living activities. I find the Landlord must provide water for the health and safety of the Tenant and for the use of the residential property.

The Tenant has made at least two attempts reaching out to the Landlord about the provision of water. The Landlord told the Tenant that their Attorney is responsible for

collecting rents, dealing with dispute resolution matters, and working with contractors for maintenance of their properties. I find the Tenant has made sufficient efforts at reaching out to the Landlord and their Attorney seeking repairs to the well, and for water provision for daily living activities.

The water delivery company will not take payment or business from the Landlord because the Landlord still owes them money. Section 33(5) of the Act states a landlord must reimburse a tenant for amounts paid for emergency repairs. The Tenant must provide the Landlord's Attorney with monthly written accounts for filling the cistern, and pursuant to Section 33(7) of the Act, it states the Tenant may deduct the amount from rent to recover the costs of filling the cistern.

Pursuant to Section 62(3) of the Act, I Order that the Landlord reimburse the Tenant for monthly fillings of the cistern on the residential property. The Tenant is authorized, pursuant to Section 72(2)(a) of the Act, to deduct this amount from rent due to the Landlord.

Conclusion

The Tenant is authorized to deduct monthly fillings of the cistern from rent that is due to the Landlord. The Tenant is Ordered to provide the Attorney with invoices for the cistern fillings.

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

Dated: August 16, 2022

Residential Tenancy Branch