



Dispute Resolution Services

Page: 1

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 to the landlords to make repairs or emergency repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

Both parties attended the hearing at 9:30 a.m. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Tenant's Other Claims

The tenant was agitated during the hearing and abruptly left the hearing at 9:42 a.m., stating that the tenant was suffering from a migraine. Prior to leaving the hearing, the expedited hearing process was explained to all parties, which included references to other issues that do not fall under the definition of Emergency Repairs as defined in section 33 of the *Act* below:

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.

The tenant confirmed in the hearing that the issues with the primary heating system was resolved, but that there were outstanding issues involving windows in the coach home that have been covered by the landlords.

Under Rule 10 of the RTB Rules of Procedure, the director may set an application for dispute resolution down for an expedited hearing meaning it will be heard on short notice to the respondent. As stated in Policy Guideline #51, attempts to amend the application or add additional claims are not permitted.

“If the application is scheduled as an expedited hearing (see ‘Scheduling an Expedited Hearing’ below), 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.”

In addition to the tenant’s expedited application for emergency repairs, the tenant referenced other issues in this tenancy that do not fall under the definition of emergency repairs as described under section 33 of the *Act*. As stated in Residential Policy Guideline #51 about Expedited Hearings “an application for an expedited hearing cannot be combined with another claim.”

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

As the tenant left the hearing before further discussion could take place, the tenant's **application pertaining to the window is dismissed is with leave to reapply**. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

As the tenant confirmed in the hearing that the heating system was functioning, the tenant's application for emergency repairs was cancelled. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

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: August 12, 2022

Residential Tenancy Branch