



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, PSF, FF

Introduction

This hearing dealt with a tenant's application for a repair order and order to provide services or facilities.

The tenant appeared for the hearing. An agent appeared on behalf of the named landlord. The parties were affirmed and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The tenant testified that she served the proceeding package and evidence to the landlord, in person, on June 16, 2022 at the rental property.

The tenant then served additional materials in an attempt to amend the application with respect to a monetary claim. The additional materials were sent to the landlord via email on September 28, 2022.

The landlord's agent testified that she is the spouse and co-owner of the subject property and since October 2, 2022 she has been acting as the landlord's agent and property manager until such time a permanent property manager or agent is secured.

The landlord's agent requested an adjournment as her spouse and co-owner is currently hospitalized. His discharge date is unknown as of yet and it is expected that even after he is discharged, he will be unable to undertake any stressful activities.

The landlord's agent testified that she was not entirely sure of what materials were served to the landlord but that she had conversations with her spouse concerning the matter and she was sitting beside her husband during today's hearing. The landlord's agent was provided the landlord's evidence that her husband had compiled up until he

was taken to the hospital on September 24, 2022 and the landlord's agent had those materials served to the tenant on October 6, 2022. The tenant confirmed that she was served with the landlord's evidence.

The landlords' agent stated she is not in a position to respond to the tenant's monetary claims. I informed the parties that a request for monetary compensation was not made on the Application for Dispute Resolution that was filed. The tenant provided materials on September 28, 2022 that appear to be an attempt to make a monetary claim but the materials are not accompanied by an Amendment to an Application for Dispute Resolution that is required to amend an Application for Dispute Resolution. Therefore, I informed the parties that I was not considering a monetary claim and the matter at hand pertained to the need for repairs.

Since I have not considered any monetary claim with respect to this matter, the tenant was informed of her right to make another Application for Dispute Resolution to make such a claim.

With respect to the adjournment request, I denied the request as I was unsatisfied that it would be necessary to reach a resolution with respect to the remedies sought by the tenant, which is one of the criteria I must consider in granting an adjournment under Rule 7.8 of the Rules of Procedure.

I make this determination considering the following:

- The tenant confirmed that the area in need of repair is one specific area of the property which is the rotting back deck and mouldy storage area under the back deck.
- The landlord's agent understood that the area of concern was the back deck and the area under the deck, plus the stairs, and the landlord's agent has taken steps to address the matter in recent days including requesting that a contractor go inspect the area and report back to her with their findings.
- The landlord's agent understands that as a co-owner and landlord of the property there is an obligation to ensure the property is safe and that necessary and appropriate repairs be made in a timely manner.

Issue(s) to be Decided

Is it necessary and appropriate to issue orders with respect to repairs at the property?

Background and Evidence

The tenant submitted that she has been requesting repairs to the back deck and the storage area under the deck for a long time and the landlord has not adequately responded to the requests.

The tenant submitted a number of emails into evidence that demonstrate the tenant put the landlord on notice of her concerns about the deck rotting and mould formation in the area beneath the deck. The tenant also provided photographs of the subject area and I see what appears to be questionable structural supports and mould.

The landlord's photographic evidence appears to show the tenant using the topside of the deck and backyard for socializing purposes and the underside of the deck showing some stored items under the deck.

The landlord's agent stated that since she has taken over management of the property, on October 2, 2022, she has commenced action to engage the service of a contractor to inspect the back deck, under the deck, and the back stairs. The landlord's agent testified that the contractor was supposed to attend the property yesterday; however, she has not confirmed with the contractor whether they attended and she has not received the contractor's findings yet. The landlord's agent was agreeable to following up with the contractor to ensure an inspection has taken place or will take place soon and, depending on the contractor's findings and recommendations, she will commence the necessary and appropriate repairs in a timely manner. The landlord's agent suggested that four weeks, approximately, may be a realistic timeline to commence repairs.

The landlord's agent requested that I instruct the tenant to not communicate or interfere with the landlord's efforts to have a contractor on the property to inspect and make any necessary repairs and that all communication with the contractor should be between the contractor and the landlord or landlord's agent. The tenant was in agreement with this request.

The tenant expressed concern that the landlord may attempt to remediate the mould inadequately and sought an order that mould remediation be performed by professionals. I found this request to be premature at this point in time considering the landlord has yet to receive the contractor's findings but informed the parties that if the repairs are inadequate or unsafe the tenant may pursue further remedy, including making another Application for Dispute Resolution.

Analysis

Section 32(1) of the Act provides:

- 32 (1) 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.

[My emphasis underlined]

It is clear from the evidence before me, that the tenant has put the landlord on notice with respect to concerns over the safety and potentially unhealthy state of the deck and the area beneath the deck, including the formation of mould.

Based on the landlord's agent's testimony, she has already begun the process of having the subject area inspected by a contractor and the landlord's agent acknowledges the landlord's obligation to ensure the property is safe and healthy by making necessary and appropriate repairs in a timely manner.

In reading the emails exchanged between the parties, it is evident the parties are in dispute as to whether the landlord is required to give the tenant advance notice before inspecting the back deck.

Given the above, I issue the following orders to the parties to resolve this dispute:

- 1. The landlord shall have the back deck, including the area beneath the deck, of the residential property inspected and commence necessary and appropriate repairs in a timely manner so that the back deck and area beneath the back deck is safe, healthy and in compliance with building standards.**
- 2. The tenant must not communicate or otherwise interfere with a contractor who attends the property for purposes of inspecting and/or repairing the deck and storage area.**

3. **The tenant is responsible for moving any of her personal possessions out of the way should this be required to facilitate repairs.**
4. **From this point forward, since the tenant may be required to move her personal possessions out of the way, the landlord must give the tenant at least 24 hours of advance notice before a scheduled inspection of the deck area and repair work is set to commence.**

Having reviewed the materials before me, including three emails the tenant had sent the landlord in 2021, I find it is clear that the tenant has brought this matter to the landlord's attention on a number of occasions and the potentially unsafe and unhealthy condition of the back deck and storage area continued to be a matter that has not sufficiently addressed by the landlord when the tenant made her Application for Dispute Resolution in June 2022. Therefore, I award the tenant recovery of \$100.00 filing fee from the landlord by withholding a one-time deduction of \$100.00 from a subsequent month's rent. In withholding \$100.00 from a subsequent month's rent, the landlord must consider the rent to be paid in full.

Conclusion

I have issued orders to both parties with a view to having repairs to the residential property accomplished in a timely manner.

Should the repairs not be made in a timely manner or are inadequate, the tenant may make another Application for Dispute Resolution.

The tenant is authorized to withhold a one-time deduction of \$100.00 from a subsequent month's rent to recover the filing fee from 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: October 14, 2022

Residential Tenancy Branch