



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This expedited hearing dealt with the tenants' application against the landlord under the Residential Tenancy Act (the Act) for:

- an order requiring the landlord to carry out emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The hearing was attended by the tenants and the landlord's agent. Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

Are the tenants entitled to:

- an order requiring the landlord to carry out emergency repairs?
- recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the testimony and documentary evidence of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began on March 31 or April 1, 2018; rent is \$7,140.00, due on the first of the month; and the tenants paid a security deposit of \$9,900.00 which the landlord still holds.

The tenants testified they have been experiencing water leaks in the unit for the duration of the tenancy, and referenced a prior Residential Tenancy Branch decision on the matter, noted on the cover page of this decision.

In that decision, the parties had agreed that a licensed qualified tradesperson would assess the unit for leaks and repair as needed, completing the repairs no later than November 30, 2021.

The tenants testified that repairs had been done by an unqualified person, and that in December 2022, heavy leaks were occurring in many areas of the house, and the tenants feared the ceiling would cave in because it was heavily bowed. Submitted in support are photos depicting water leaking into different rooms in the home, and cracks in the ceiling.

The tenants testified the heavy leaking has stopped, but they are concerned about future leaks, and the possibility of the ceiling collapsing. The tenants testified that for the last 4 years, the problem areas, in about 5 areas of the house, are only half fixed. The tenants testified that water is leaking from the lighting openings in the ceiling, and that they are concerned about electrocution and further damage to the electrical system. The tenants testified the landlord has not repaired damage to the unit caused by the leaks, including peeling plaster and stains to the walls.

The agent testified that the roof was replaced last year, and that the leaks this year were the result of a "natural disaster." The agent testified that after the tenants called him on December 23, 2022, regarding leaks and a loss of power, he immediately contacted a contractor and an electrician, and that power was restored the following day by 1:00 pm.

The agent's written submission states that the contractor said the leaks were caused by heavy snow, cold temperatures overnight, and heavy rain the day after. The agent testified the contractor said there was nothing they could do to prevent the leaks, because the water had frozen, ice raises the water level, and once it rains, the rain goes over to the house.

The agent testified that the owner spent over \$900.00 last year to fix damage to the ceiling in the laundry room and the jacuzzi room. The agent testified that the landlord had tried to fix the ceiling in "room 5," but could not because the person subletting from the tenants refused to move out.

The agent testified that a roofing company had replaced the roof, and that the contractor had visited the house on December 24, 2022, and replaced part of the roof.

Analysis

Section 32 of the Act, on the obligations of a landlord and tenant to repair and maintain, includes:

- 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.

Section 33 of the Act defines “emergency repairs” as 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, ...

The tenants testified that the unit has been leaking in multiple places since the beginning of the tenancy, that in December 2022 there were heavy leaks, and that as a result they are concerned about electrical safety and the ceiling caving in. The tenants testified that the landlord has not repaired damage to the unit caused by the leaks.

The agent testified that they and the landlord have been responsive to the tenants’ complaints about leaks, that the entire roof has recently been replaced, and that repairs to the ceiling have been hampered by the person subletting from the tenants refusing to move out.

Based on the affirmed testimony and documentary evidence of the tenants, I find that there are extensive, heavy leaks occurring in the unit.

I order the landlord to retain the services of a professional, qualified roofing company that is currently operating in British Columbia, and has not previously worked on the house. The roofing company must assess and repair the roof to a state whereby there is no further water ingress into the rental unit. This work must be completed as soon as possible, and no later than February 28, 2023.

I order the landlord to retain the services of a professional, qualified restoration company that is currently operating in British Columbia, and has not previously worked on the house. The restoration company must assess and repair damage to the home caused by ingress of water into the rental unit. This work must be completed by March 15, 2023.

I order the landlord to make any additional repairs to the interior and exterior of the unit necessary to comply with section 32 of the Act. This work must be completed by March 31, 2023.

The tenants are at liberty to apply for monetary compensation if the landlord does not complete the work as ordered and required by the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

I order the landlord to retain the services of a professional, qualified roofing company that is currently operating in British Columbia, and has not previously worked on the house. The roofing company must assess and repair the roof to a state whereby there is no further water ingress into the rental unit. This work must be completed as soon as possible, and no later than February 28, 2023.

I order the landlord to retain the services of a professional, qualified restoration company that is currently operating in British Columbia, and has not previously worked on the house. The restoration company must assess and repair damage to the home caused by ingress of water into the rental unit. This work must be completed by March 15, 2023.

I order the landlord to make any additional repairs to the interior and exterior of the unit necessary to comply with section 32 of the Act. This work must be completed by March 31, 2023.

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: January 27, 2023

Residential Tenancy Branch