



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. 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 landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Additional Claims

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.

As stated in Residential Policy Guideline #51 about Expedited Hearings "an application for an expedited hearing cannot be combined with another claim." The tenant submitted a detailed summary of the issues in this tenancy. As explained to the tenant, any claims that are not considered an emergency repair as defined in section 33 of the *Act* will not be addressed.

Issues to be Decided

Is the tenant entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on June 15, 2022. The tenant pays monthly rent of \$500.00, payable on the first of every month. The landlord holds a security deposit of \$250.00.

During the hearing, the tenant confirmed that there were several outstanding issues that have not been addressed by the landlord that qualify as emergency repairs under section 33 of the Act. The issues are as follows:

- 1) The tenant does not have unlimited access to the hose, and as a result, the tenant is unable to clean and sanitize the composting toilet. The tenant submitted a photo of the toilet, which requires cleaning as the toilet is non-flushing, and does not connect to a plumbing facility. The tenant notes that the cleaning must be done outdoors as to not contaminate the home with human excrement and urine. The tenant requests that this service be restored so they can properly access water for sanitation purposes.

The tenant argued that the sink referenced by the landlord is too small.

- 2) The tenant testified that the main heating source in the rental unit is a wood burning stove. The tenant testified that the stove is not working properly, and has at least seven safety issues that have been identified, including the need for repairs by a certified tradesperson, including the installation of a working rangehood. The tenant testified that the landlord did offer oil heaters, but the offer was withdrawn as the tenant had to agree to specific conditions.
- 3) The tenant testified that the stairs were missing railings, which posed as a safety hazard.

The tenant expressed concern in the hearing that the property owner, KR, wanted to perform the repairs, and is not certified to perform the repairs.

The landlord testified that they did attempt to enter the suite to perform repairs, but the tenant would not provide proper and safe access to do so. The landlord testified that they were ready and willing to repair the missing railing, and install the rangehood, which was already purchased and in storage. The landlord testified that tradespeople were afraid of entering the suite because of the tenant and their dogs.

The landlord testified that they did purchase oil heaters for the tenant, but the tenant has not paid anything for the electricity so the oil heaters were returned. The landlord testified that they required proper access to perform all the requested repairs, including repairs to the wood stove. The landlord confirmed that there are also baseboard heaters in the suite.

KR testified in the hearing that they hold two journeyman tickets as a cabinet maker and carpenter, and have been working in trades since 1975. KR testified that they were also a building science specialist. KR testified that they were more qualified to perform the repairs than most in the region, and qualified to do the specified work. KR testified that when they attempted to perform repairs, the tenant would prevent access and become confrontational. KR and the landlord were also fearful of the tenant's aggressive dogs.

The landlord argued that the tenant has access to a utility sink, which is sufficient for cleaning the toilet. The landlord argued that the hose cannot be used in the winter due to freezing, and the potential damage this may cause.

Analysis

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

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.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) 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.

Under Section 33 (1)(c) of the *Act*, I find that the wood stove qualifies as an emergency repairs as it relates to the primary heating system. The landlord confirmed that they were prepared to perform repairs, which include installing a new range hood, but they required safe access to do so.

I am satisfied that the wood stove and range hood are part of the primary heating system, and requires repairs. As noted by the landlord, they require safe access to perform these repairs.

Given the testimony and evidence before me, I order the landlord to retain the services of a licensed tradesperson to inspect and, as required, repair the wood stove and rangehood in a manner that complies with sections 32 and 33 of the *Act*. I order that the landlord provide the tenant with at least 24 hour's written notice so that the tenant can provide safe access to the landlord to perform these repairs, free from any disturbance, harassment, or obstruction by the tenant, any parties allowed by the tenant, or the

tenant's pets. I order that the repairs to the wood stove and range hood commence by February 1, 2023 unless the following applies:

As noted in Residential Tenancy Policy Guideline 2B, in the case that these repairs cannot be completed without vacant possession of the rental unit, the landlord must apply under section 49.2 of the *Act* for an order to end the tenancy and an order of possession if all of the following apply:

- a) the landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit(s)
- b) the renovations or repairs require the unit(s) to be vacant
- c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit(s) or the building in which the rental unit(s) are located
- d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement

Until the repairs to the wood stove can be completed, I order that the landlord provide the tenant with an adequate heating source that meets health and safety standards. I order that this be provided to the tenant without condition as long as the tenant's primary heating source is not functioning safely or properly.

I order that the tenant not interfere with any repairs that need to be performed by the landlord. I allow the landlord to retain the service of any licenced tradesperson as long as the tradesperson can provide proof of a current license or ticket to perform the work required.

As the landlord agreed to repair the railing, I order that the landlord undertake this repair in a manner to meets safety standards on or before February 1, 2023. I order that the tenant not interfere with this repair.

Lastly, the tenant requested access to the hose in order to clean the toilet. I note that access to the hose is not considered an emergency repair under section 33 of the *Act*. I am satisfied that the landlord did provide a reasonable explanation for why the hose can only be used seasonally. I am also satisfied that the tenant does have access to running water that can be used for cleaning. Although I note the tenant's concern about sanitation and health and safety standards, I am not satisfied that the tenant's request qualifies as an emergency repair under section 33 of the *Act*. I therefore dismiss this portion of the tenant's application without leave to reapply.

Conclusion

I order that both parties comply with the orders made in this decision.

The remainder of the tenant's application is dismissed without leave to reapply.

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 09, 2023

Residential Tenancy Branch