Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AGAPE INVESTMENT CO LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ERP, FFT**

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order for emergency repairs to be done to the rental unit pursuant to section 33; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant was represented at the hearing by his agent RH (the "applicant"). The landlord was represented by its owner, PW (the "landlord"). The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary issues
As both parties were present, service of documents was confirmed. The landlord acknowledged service of the applicant's Notice of Dispute Resolution Proceedings. The applicant denies being served with the landlord's evidence. The landlord testified she sent the applicant her evidence via registered mail on December 28, 2022, and provided a tracking number, recorded on the cover page of this decision. The item was returned to the landlord as "refused" by Canada Post. I deem the landlord's evidence served upon the applicant on January 2, 2023, the fifth day after being sent by registered mail in accordance with sections 88 and 90 of the Act.

The applicant testified that he sent in additional evidence to the Residential Tenancy Branch subsequent to filing the application for dispute resolution. I advised the applicant that I would not use any of this documentary evidence in my decision, as the application was for an expedited hearing which is subject to Rule 10.2 (reprinted below).

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

The applicant supplied his own name as "tenant" in the application for dispute resolution, although he is only acting as the agent for the actual tenant, MT whose name does not appear on the application. The applicant explained that MT has been paying rent for the unit but had to leave the province 3 years ago to deal with family issues. The applicant's son and "J" were occupying the unit during the tenant's absence. The landlord does not recognize MT as her tenant but acknowledges her colleague has met the applicant more than once and corresponded with him regarding the issue of emergency repairs. Rent is still being paid on the rental unit, except for January and a notice to end tenancy was posted to the door of the rental unit. Based on the circumstances, I amended the application for dispute resolution to reflect MT as the tenant on this application pursuant to section 64(3) of the Act. To be clear, the application is amended so that this hearing could proceed; I make no finding as to the status of the parties and whether a there is a tenancy agreement between them.

Issue(s) to be Decided

Should the landlord be required to perform emergency repairs?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The applicant gave the following testimony. In early October, he made the landlord aware of the situation in the rental unit with raw sewage from the units above entering into the tenant's unit. According to the applicant, the landlord allowed sewer water to flow from a crack in the main discharge pipe behind both the kitchen and bathroom walls. The landlord did some patching of the cracks but no mitigation of the damage behind the walls.

The applicant acknowledges that the landlord has done some repairs to the leaking pipe and the leakage issue is no longer visible; however he cannot determine the extent of damage done behind the walls and if black water contamination and mould was present. The applicant acknowledges he contacted the local health authority regarding the issue.

The landlord testified that they were first notified of noise from the upper unit when they took showers or baths. The landlord went to the unit, met "J" the current occupant and found nothing on October 17th. November 26th, the occupants notified the landlord about wetness above the fridge and the landlord cut the drywall to investigate. On December 2nd, a technician confirmed pinhole leaks connected to the bathtub of the upper unit and not sewage. On December 11th and 12th, the technician returned, replaced the section of drain pipe and sealed up the wall. Emails (with pictures) were sent between the landlord and the local health authority to show the repairs were done. In the emails, the landlord confirms dehumidifiers were being used, no water is being detected, and that the suite is dry.

Analysis

Section 33 of the RTA defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof;
- Damaged or blocked water or sewer pipes or plumbing fixtures;
- The primary heating system;
- Damaged or defective locks that give access to a rental unit; or
- The electrical systems.

The applicant has acknowledged that the landlord appears to have fixed the leaking pipe and that there is the outstanding issue of remediation from sewer water contaminating the rental unit.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

The application was to have emergency repairs done to a leaky pipe that either carried water from a toilet or shower/bath. I have viewed the photos provided by the applicant and based on these photos, I find that have insufficient evidence to determine which is accurate. Other than the applicant's testimony that the water was "sewage", rather than bathwater, no means to corroborate this was presented. No air quality tests, reports or testimony from an abatement expert was supplied. On a balance of probabilities, I find the water leakage to be bathwater and that the landlord has done all the repairs that are necessary for the health or safety of the occupants of the unit. In making this finding, I accept the photographic evidence provided by the landlord that shows the drainpipe sufficiently replaced and the generally clean and dry condition of the rental unit kitchen. Consequently, I dismiss the application seeking emergency repairs to be done to the rental unit without leave to reapply.

Conclusion

This 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 05, 2023

Residential Tenancy Branch