Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LELEM HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP

Introduction

This expedited hearing was set to deal with a tenant's application for emergency repair orders.

Both parties appeared or were represented for the hearing. The parties were affirmed and the hearing process was explained to the parties.

At the outset of the hearing, I explored service of hearing materials. The tenant testified that she sent the proceeding package and her evidence to the sr. property manager, by email, on December 7, 2022 and by giving a package to the on-site building manager, in person, on December 8, 2022. The landlord confirmed receipt of these packages and took no issue with respect to service.

The landlord served the tenant with its materials, by email, sent on December 28, 2022 and a printed version was delivered to the tenant, in person, on December 28, 2022. The tenant confirmed receipt of the landlord's materials. Considering the volume of materials submitted, the date of this hearing and service of the landlord's materials on December 28, 2022, I enquired as to the reason the landlord's materials were served so close to the hearing date. Rule 10.5 of the Rules of Procedures provides that a respondent in an expedited hearing is to serve its evidence "as soon as possible" but at least two days before the hearing. The landlord's legal counsel responded that they complied with the two day deadline and explained there was another lawyer initially engaged by the landlord but that lawyer was unavailable for this proceeding and the case was more recently given to the legal counsel appearing before me more. I found legal counsel's explanation to sound credible and I was satisfied the landlord did not unreasonably delay service of evidence and I admitted the landlord's materials.

After receiving the landlord's materials on December 28, 2022, the tenant then served additional materials, by emailing, sent to the landlord's legal counsel only, on January 1, 2023. The landlord's legal counsel acknowledged receiving the tenant's email late in the evening of January 1, 2023 and took issue with this service as it was late and not given to the landlord. Given the amount of hearing time spent on service and the volume of evidence that had been submitted, I indicated that this proceeding may have to be adjourned due to time constraints and if that were the case then service of the tenant's late evidence could be rectified. Ultimately, in the allotted hearing time, it was unnecessary to refer to the materials uploaded on January 1, 2023 and the hearing was not adjourned.

The landlords' legal counsel pointed out that the tenant had provided a witness list and informed me that the landlord also had a witness available and waiting to be called. After hearing from both parties, I was unsatisfied that calling the witnesses would resolve the dispute as it evolved during the hearing and the witnesses were not called. However, should the parties find themselves in a future dispute resolution proceeding, it may be prudent to have their witnesses available to testify.

Issue(s) to be Decided

Has it been established that emergency repair orders are required? If not, is it appropriate to issue any other order in resolution of this dispute?

Background and Evidence

Th tenancy started June 29, 2022 and the tenant is required to pay rent and storage in the sum of $1477.50 on the first day of every month.

The rental unit is a one bedroom apartment located in a five story apartment building that above commercial space on the ground floor. The named landlord rents the apartments located on floors 2 through 5 from the property owner under a long term lease and sublets the apartments to tenants at below market rental rates.

The building is newly constructed to a "gold LEED" standard. Each apartment has its own ERV (energy recovery ventilator) system. The tenant's ERV is located in a closet in the rental unit and fresh air is taken in through a vent located on the tenant's balcony. There is also a vent on the roof of the building that takes in fresh air for the mechanical systems to service the hallways and other common areas. The commercial space on the ground floor also has its own independent ventilation system.

The tenant asserts that she has been experiencing a severe intake of chemical compounds, gasses and vapours in her rental unit since July 11, 2022.

The tenant was of the view that the chemical compound ingress would have to come from either: the vent located on the building's room; through the balcony vent that provides fresh air for her ERV; through a crack or gap in the ducting that provides fresh air to the ERV, or from cracks or gaps that may have been caused from drilling, hammering and construction activities taking place in the commercial unit below.

The tenant acknowledged that the building's roof top fresh air intake and mechanical system were tested to determine whether toxic chemical gasses were entering the building that way and testing results determined the building's system was not responsible for doing so.

There is no dispute that the tenant has communicated her concerns to the landlord and the landlord has taken steps to investigate the complaints and communicate their findings to the tenant. Despite this, the tenant remains convinced that she continues to suffer from exposure to toxic gasses and vapours in the rental unit and that is made worse when she turns on the ERV. As a result, the tenant does not often turn on the ERV.

The landlord is of the position that all of the building's systems, the rental unit and the rental unit's ERV system have been inspected and testing has been performed by professionals to determine whether toxic chemical compounds were present. The property manager has also caulked any gaps and cracks. The professional engineer tasked with investigating the tenant's complaints by UEL (University Endowment Lands) manager has concluded there is nothing wrong with the systems in the building or the rental unit and there are no toxic levels of chemicals detected.

The landlord acknowledged that the tenant has presented readings taken from a consumer grade VOC (volatile organic compounds) detector and they are elevated readings; however, the landlord does not rely upon those readings as the testing device is inferior to the testing methods used by professionals and such detectors will read VOCs that come from daily activities and household produces such as cleansers, cooking and beauty products.

Both parties pointed to a document in the landlord's evidence package (labelled B.4). The document, dated August 31, 2022, is written by the UEL Manager and addressed to

the professional engineer tasked with investigating the tenant's complaints regarding air quality. The tenant commented that it appears to be prepared by professionals and that she would be satisfied if the landlord complied with the nine recommendations appearing in the document.

The landlord responded that they have complied with the nine recommendations and engineer who was given the nine recommendations was the witness they had standing by to testify. The landlord's legal counsel stated the witness could be called to corroborate that the nine recommendations were completed and satisfied and that documentary evidence that would show satisfaction of the recommendations.

The tenant stated that receiving verbal confirmation from the landlord's witness would not likely satisfy her since some of the recommendations involved information that was to be provided by the tenant and she has never been asked to provide such information so she doubts that all nine of the recommendations have been satisfied.

I proceeded to explored with the parties a resolution whereby the landlord would provide the tenant with a detailed description of how the recommendations were satisfied and the evidence to support that.

The landlord's legal counsel agreed to do so conditional upon the tenant would withdrawing her Application for Dispute Resolution. The property manager also sounded frustrated, commenting that the tenant will never be satisfied.

Having heard the property manager has provided summary findings to the tenant and the tenant remains convinced she is suffering from the ingress of toxic chemicals into the rental unit, I was of the view that a reasonable resolution would be to provide the tenant with a detailed description as to how the nine recommendations in the August 31, 2022 document were satisfied and the evidence to support that. Since the tenant has yet to receive and review such materials, I found counsel's condition to provide such materials conditional upon the tenant agreeing to withdraw her Application for Dispute Resolution to be overly restrictive and may be prejudicial, leaving no recourse for the tenant. Therefore, I informed the partis that I would order the landlord to provide the such documentation to the tenant.

The landlord's legal counsel indicated they would need 30 days to compile and present the documentation to the tenant. The tenant indicated 30 days was too long as she is experiencing health issues. At the end of the hearing, the landlord was ordered to provide the documentation to the tenant within two weeks.

Analysis

The tenant has made this application, seeking emergency repairs. Section 33 of the Act defines "emergency repairs" as follows:

> **33** (1)In this section, **"emergency repairs"** means repairs that are
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> (a)urgent,
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> (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
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> (c)made for the purpose of repairing
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> (i)major leaks in pipes or the roof,
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> (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
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> (iii)**the primary heating system**,
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> (iv)damaged or defective locks that give access to a rental unit,
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> (v)the electrical systems, or
>
> (vi)in prescribed circumstances, a rental unit or residential property.

[My emphasis added]

I accept that if the primary heating system (the rental unit ERV) is causing or drawing toxic gasses, vapours or fumes into the rental unit to such an extent it is harmful to the health and safety of the rental unit occupants, it would necessitate an urgent repair. In other words, if that circumstance is present, an "emergency repair" would be required.

However, the parties were in dispute as to whether there is a presence of toxic chemical gasses, vapours or fumes entering the rental unit by way of the ERV. I am satisfied the landlord has taken action to respond to the tenant's complaints and is of the position there are no toxic chemicals entering the rental unit from or through the ERV; however, it is clear the tenant remains convinced she continues to suffer from toxic chemical exposure from or through the ERV system.

During the hearing, both parties pointed to the same document, the August 31, 2022 email from the manager of UEL to the engineer tasked with investigating the tenant's complaints concerning air quality that contained nine recommendations to consider.

The landlord submits that the recommendations were completed but the tenant raised doubts that all of the recommendations were completed. The tenant pointed to some of recommendations whereby the tenant's input is necessary and the tenant has not been involved in satisfaction of those recommendations. As such, the tenant seeks evidence to demonstrate compliance with each of the nine recommendations in resolution of this Application for Dispute Resolution rather than a specific emergency repair.

I am of the view it is reasonable to give the parties the opportunity to resolve this matter by providing the tenant further information and evidence rather than a repair order when the need for a repair order is not certain at this time. Therefore, I issue an order to the landlord under section 62(3) of the Act and I dismiss the tenant's Application for Dispute Resolution with leave to reapply.

Considering this is an expedited proceeding and the tenant claims her health is affected, I find it appropriate to issue an order to the landlord with a shorter deadline than the 30 days requested by landlord's legal counsel.

Pursuant to section 62(3) of the Act, I order the landlord to:

1. **Provide the tenant with a detailed description as to how each of the nine recommendations appearing in the August 31, 2022 email were satisfied, including the actions taken and the results. The landlord is at liberty to seek assistance of the engineer who was provided these recommendations by the UEL manager.**
2. **Provide the tenant with any evidence that supports the above.**
3. **The above material is to be given to the tenant by January 17, 2023.**

The tenant's request for emergency repairs is dismissed without prejudice. If after reviewing the landlord's materials described in the orders above the tenant is of the position the landlord has not complied with nine recommendations, the tenant may reapply and seek further remedy.

Conclusion

The tenant's request for emergency repair orders is dismissed with leave to reapply.

I have issued orders to the landlord with a view to providing the tenant with further information, data and evidence to demonstrate compliance with the nine recommendations issued to the engineer.

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 04, 2023

Residential Tenancy Branch