



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- an order for the Landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and one of the Tenants, TM, attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord was represented by legal counsel CP during the hearing.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Materials

CP confirmed receipt of the Tenants' notice of dispute resolution proceeding package ("NDRP Package") and documentary evidence. The Landlord acknowledged receipt of two videos from the Tenants on December 20, 2022, prior to this application being made. Based on the foregoing, I find the Landlord was sufficiently served with the NDRP Package, the Tenants' documentary evidence, and the Tenants' videos pursuant to section 71(2) of the Act and the Director's Standing Order dated March 1, 2021.

TM acknowledged receipt of the Landlord's documentary evidence. I find the Tenants were sufficiently served with the Landlord's evidence in accordance with section 71(2) of the Act and the Director's Standing Order dated March 1, 2021.

Issues to be Decided

1. Are the Tenants entitled to an order for emergency repairs?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is part of a multi-unit building. This tenancy commenced on May 1, 2015 and is month-to-month. Rent is \$1,724.49 due on the first day of each month. The Tenants paid a security deposit of \$800.00.

TM explained that there was a leak in the rental unit on December 20, 2022. TM referred to two videos submitted by the Tenants which show water leaking from the master bedroom windows onto the floor.

TM stated that the water continued for days and came into the rental unit through the walls. TM stated that later the water came through the ceiling, through the light fixture and down into the interior wall. The Tenants submitted photographs of the water damage in the rental unit and some mould.

TM stated that the Tenants have temporarily vacated the rental unit since January 1, 2023. The Tenants submitted this application on February 6, 2023.

TM stated that nothing was being done by the Landlord, and when something was finally being done, the Landlord wanted to do a superficial repair by painting over the water damage. TM expressed that the Tenants did not find this to be satisfactory, as the Tenants are concerned about water pooling inside the wall and ceiling. TM stated that the Tenants are concerned that rotting membranes, joists, or cross beams could become a health issue.

TM referred to an inspection report dated February 14, 2023 (the "Inspection Report") submitted by the Landlord and questioned whether this inspection was for the rental unit. TM noted that the address in the body of the Inspection Report is not the rental unit address. TM stated that he did not accept the Inspection Report as an inspection of the rental unit.

TM argued that a second coat of paint would not address any issues with interior damage or wall buckling. TM submitted that the Tenants seek a proper and full inspection of the interior and exterior walls and ceiling where the water leak occurred, as well as remediation of the wall to its prior condition.

In response, CP argued that the landlord has already made best efforts to address the leaking that occurred through the windows, which was caused by unusually low temperatures in the week of December 20, 2022, when ice froze on the building exterior. CP referred to a photograph of the building exterior and text message correspondence between the parties.

CP submitted that the building was rain-screened in 2007 and argued that rain would not collect between the walls.

CP argued that the Tenants have not established that emergency repairs are needed, though the Landlord has taken various steps to address the Tenants' concerns. CP referred to a written timeline of events and invoices submitted by the Landlord.

According to the timeline, the Landlord contacted several companies on December 21 and 22, 2022, after the Tenants reported the leak. The Landlord had contractors clean the building on December 23, 28, and 31, 2022 to prevent ice from forming on the exterior wall. CP submitted that the leak stopped after December 2022 when temperatures rose and the ice melted. CP submitted that the Landlord needed to wait for the unit to dry before commencing repairs.

The Landlord attended the rental unit with a contractor on January 25, 2023. CP submitted that there was only staining on the wall above the windows, and no signs of damage or water stains on the ceiling. CP referred to a photograph of the rental unit taken on January 25, 2023.

According to the Landlord's timeline, the Landlord made arrangements to have the rental unit re-painted. The Landlord's painter was to use a water-based primer to prevent mould growth. The painting work started on February 6, 2023 and was to continue on February 7, 2023, but it was cancelled by the Tenants. The Landlord received notice of this application on February 8, 2023.

CP also referred to the February 14, 2023 Inspection Report submitted by the Landlord. The Inspection Report states that the author, SB, is a "certified building technologist" and "registered reserve fund analyst". The Inspection Report further states as follows (portions redacted for privacy):

Subject: Building Condition Inspection of [rental unit address]

Scope of Work:

- Provide a full inspection of the entire building's exterior, interior, and all service rooms, including the attic and crawlspace. The inspection also included a review of the electrical, plumbing, heating, and fire protection systems throughout the building.

Suite [same number as rental unit but different address] was accessed on February 14, 2023 and was inspected thoroughly for building component deficiencies, along with health and safety conditions.

The condition of the interior walls, ceilings and floors of Suite [number] were seen with no visible damage other than minor cosmetic damage and typical wear and tear. The electrical panel was seen with no visible arcing, scorching or any damage. All electrical receptacles, light switches, and light fixtures were seen functional with one missing light fixture cover to be replaced but no visible damage. All plumbing fixtures were tested, for function and flow, and all these fixtures were seen operational with no visible leakage or damage. The heating in the Suite is all cast iron radiant heaters which were all operational on the day of the inspection with no visible damage or any leakage seen. The smoke detector in the suite was seen operational on the day of the inspection.

During the inspection of Suite [number] a calibrated moisture meter was used to measure any moisture in the interior and exterior walls throughout the Suite, including the ceramic tiled walls in the bathroom. All areas tested were found to be well under the allowable moisture limits in gypsum board and plaster walls

with no signs of any mold or mildew seen on the walls or ceilings throughout the suite, which included all the rooms and closets.

The Landlord stated that the building has been put up for sale and the Inspection Report was requested by the buyer. The Landlord pointed out that the subject line of the Inspection Report has the correct rental unit address. The Landlord stated that the different address in the body of the Inspection Report is likely a typo or mistake. The Landlord stated that she does not own a unit at the second address. The Landlord confirmed that the Inspection Report was given to her by the inspector for the purposes of this hearing. The Landlord explained that she had little time to prepare the evidence for this application and could request the inspector to correct the report.

The Landlord stated that the Tenants were previously notified about an inspection and appraisal at the property on February 14, 2023. TM stated he was not aware that he was allowed to be present for the inspection.

Analysis

1. Are the Tenants entitled to an order for emergency repairs?

Section 33 of the Act states:

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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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.

(4) A landlord may take over completion of an emergency repair at any time.

(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);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(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.

Based on the evidence presented, I find on a balance of probabilities that the address in the body of the Inspection Report was a mistake, while the subject line contains the correct address for the basis of the Inspection Report. I accept the Landlord's testimony that she does not own the unit located at the other address. I also find it is not disputed that there had been an inspection of the rental unit on February 14, 2023. Furthermore, I find the Inspection Report describes specific details within the rental unit, such as a missing light fixture cover and cast iron radiant heaters, which were not disputed by the Tenants. As such, I accept the Inspection Report as a valid report based on a inspection of the rental unit by a certified individual, SB, on February 14, 2023.

I find the Inspection Report states the rental unit was inspected thoroughly for “building component deficiencies, along with health and safety conditions”. I find SB observed that the interior walls, ceilings, and floors had “no visible damage other than minor cosmetic damage and typical wear and tear”. I find the Inspection Report further explains that a “calibrated moisture meter” was used to “measure moisture in the interior and exterior walls” throughout the rental unit, and reports that all areas were found to be under the allowable moisture limits. I find it was also noted that there were no signs of mould or mildew on the walls or ceiling throughout the rental unit.

In addition, I find the Inspection Report concludes that the heating, plumbing, and electrical systems in the rental unit were all operational and not damaged.

I have also reviewed the photographs and videos of the rental unit submitted into evidence, but note that they were all taken prior to the inspection on February 14, 2023.

Considering all of the evidence presented, I am not satisfied that the rental unit is currently in need of “emergency repairs” as defined under section 33(1) of the Act. I find SB’s professional opinion as expressed in the Inspection Report to be compelling. Furthermore, I find there is insufficient evidence of any material changes to the rental unit since February 14, 2023 so as to warrant a re-inspection.

The Tenants’ claim under this part is dismissed without leave to re-apply.

2. Are the Tenants entitled to recover the filing fee?

The Tenants have not been successful in this application. I decline to award reimbursement of the Tenants’ filing fee under section 72(1) of the Act.

Conclusion

The Tenants’ application is dismissed without leave to re-apply.

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: March 03, 2023