



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ERP, FFT

Introduction

On February 28, 2023, the Tenants applied for dispute resolution seeking an order for the Landlord to make emergency repairs to the rental unit and to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenants and the Landlord attended the hearing. The Landlord was assisted by an interpreter. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided.

- Are the Tenants entitled to an order for the Landlord to make emergency repairs to the unit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on May 1, 2022, as a one year fixed term tenancy that may continue thereafter on a month to month basis. Rent

in the amount of \$1,850.00 is due to be paid to the Landlord by the first day of each month. A security deposit of \$925.00 was paid by the Tenants to the Landlord.

The Tenants testified that on February 6, 2023, they noticed their flooring was hot, wet, and lifting up due to a water leak. They testified that the rental unit is heated by hot water pipes which have broken. The Tenants testified that the bedrooms have been cold since this occurred in early February, but the rest of the rental unit is very hot.

The Tenants testified that they notified the Landlord about the issue on February 6, 2023 and the Landlord's brother in law attended the unit to take a look. The Landlord attended the rental unit on February 13, 2023 to look at the problem.

The Tenants stated that they asked for a reduction in rent and the Landlord refused and asked them to move out with compensation of one months rent. The Tenants stated that they want the rental unit to be repaired as they want to continue the tenancy.

On behalf of the Landlord ,the translator stated that the basement unit is hot due to a gas leak and is damaged due to a water leak. The Landlord had a plumber attend the unit who recommended that all the flooring will need to be removed to access the heating pipes. The Landlord stated that the Tenants will need to vacate the rental unit in order to make the needed repairs.

The Landlord testified that it will take approximately two months for the repairs of the pipes, flooring, and walls. The Landlord did not provide any official quote from a contractor on how long the repairs will take.

The Landlord was asked if she can provide alternate accommodation for the Tenants while the repairs are completed. The Landlord replied no; however, after a long discussion she agreed to actively search for a temporary accommodation for the Tenants. The Landlord agreed to pay for the Tenants temporary accommodation.

The Tenants agreed to move out while the repairs to the unit are made. The Landlord agreed that the Tenants could also assist by looking for suitable accommodation and that the parties would discuss any potential accommodation that is found. The parties were informed that there is a duty to mitigate against loss in regard to the monthly cost of temporary accommodation as well as any additional damage to the rental unit if moving out is unreasonably delayed.

Analysis

The Residential Tenancy Branch Policy Guideline #2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

In Aarti Investments Ltd. v. Baumann, 2019 BCCA 165, the Court of Appeal held that the question posed by the Act is whether the renovations or repairs “objectively” are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, then, according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.

On the other hand, in Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs. If the renovations or repairs that require vacancy can be completed within 45 days or less and the tenant is willing to make alternative living arrangements for the period of time vacancy is required and provide the landlord with the necessary access to carry out the renovations or repairs, then the tenancy agreement should not need to end to achieve the necessary vacancy.

Section 32 of the Act states that 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 states that “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.

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

Based on the above legislation and policy guideline, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I take guidance from the guideline that provides *If the renovations or repairs that require vacancy can be completed within 45 days or less and the tenant is willing to make alternative living arrangements for the period of time vacancy is required and provide the landlord with the necessary access to carry out the renovations or repairs, then the tenancy agreement should not need to end to achieve the necessary vacancy.* I find the Landlord's estimate of two months to complete the work was an approximation.

Nevertheless, with respect to the policy guideline, the application before me is from the Tenants for emergency repairs; not an application from the Landlord for vacant possession due to repairs requiring vacancy.

The Landlord and Tenant are in agreement that the rental unit requires emergency repairs to the heating system and flooring/ walls.

The parties were in agreement that the Tenants will temporarily move out of the rental unit in order for the repairs to be made.

I accept the Landlord's testimony that the repairs could take two months to complete. I order the Landlord to start the repairs to the heating system and floors/ walls using a qualified tradesperson no later than three weeks from the date of this decision. The three week period to start the repairs should give sufficient time for the parties to locate temporary accommodation for the Tenants. The Landlord is responsible to pay for the temporary accommodation.

The Tenants are responsible to pay the monthly rent due under the tenancy agreement to preserve their tenancy.

I order that the tenancy continues and once the repairs are complete the Landlord must permit the Tenants to re-occupy the rental unit.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application was successful. I order the Landlord to begin the heating system and floor/ wall repairs no later than three weeks from the date of this decision, with consideration to the availability of a qualified contractor and when the Tenants are able to temporarily vacate the unit.

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 22, 2023

Residential Tenancy Branch