



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding RESIDE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons and recovery of the cost of the filing fee.

The tenants and the landlord's agents attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. Although the landlord said they received the tenants' application late and the landlord then filed their evidence late, both parties agreed they received each other's evidence. Both parties confirmed they did not require an adjournment.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenants included the name of the strata corporation as a respondent/landlord. Additionally, the tenants listed the name of the landlord/owner as the other respondent.

I find the strata corporation is not a part of this dispute as they are not the landlords of the tenant. I exclude their name from any further consideration in these matters. I additionally included the name of the current property management company as an additional respondent.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to make emergency repairs to the rental unit for health and safety reasons and recovery of the cost of the filing fee?

Background and Evidence

The tenants submitted the tenancy began on April 1, 2023, monthly rent is \$2600, and the tenants paid a security deposit of \$1300. Filed in evidence was the written tenancy agreement.

The rental unit is a townhome in a strata complex.

In support of their application for an order requiring the landlord to make emergency repairs, the tenants stated in their application the following:

We have a MAJOR LEAK in the bathroom PIPES and a hole in the bathroom sink that causes an OVERFLOW in the sink and a major FLOOD in the vanity. It also caused the vanity to rot and caused BLACK MOLD to develop on the bathroom ceilings. The Window in the Bedroom is broken and NOT SAFE and the main lock on the front door isn't working. Lanlord is well aware of the situation, but nothing has been done yet.

[Reproduced as written]

The tenants testified about the leaking pipes in the bathroom, mould issues, the vanity, a bedroom window, and the front door. As of the day of the hearing, the tenants said that the leak has been fixed, for the most part, and the mould has been cleaned by a company hired by the landlord. As a result, I did not consider the mould issue in this dispute.

The tenants provided the following testimony at the hearing.

As to the leaking pipes in the bathroom, the tenant submitted after 3 visits from the plumber, the leak is mostly fixed. The tenant still keeps a bucket under the pipe in case of drips. The tenant was told by one of the plumbers that there was a leak in the junction, and a part is required to completely repair the leak. Due to the leaks, the vanity is rotting and smells of mould.

The bedroom window shows a gap, making it appear broken. The gap in the window makes it easier for someone to push the window open and enter the rental unit. The window requires replacing.

As to the front door, the main lock is broken and the tenants do not feel safe.

Evidence filed by the tenants included photos, communications with the landlord's agent, requests to the landlord's agent.

Landlord's response –

The landlord provided the following testimony at the hearing.

The day the tenants moved in, the previous tenants had just moved out an hour before. The bedroom window is not truly broken, but the residential property is an older building and there are issues with the window. Both the door and window are strata property and the landlord has no control over strata property. The landlord has been in regular contact with the strata corporation to replace the door and window, but so far they have not acted on their requests. The landlord has continued to follow-up with the strata corporation, but they have been dismissive.

The strata corporation has sent a technician to the rental unit to measure the window, but they have not provided an update.

The landlord has addressed many issues raised by the tenants since moving in, and continues to address them. One matter being addressed is the plumbing layout in the rental unit. The landlord is investigating how to fix or replace the entire system, and for this reason, they are reluctant to replace the vanity in the event there are more leaks.

The landlord's evidence included a written submission outlining work performed on the rental unit since the tenancy began, invoices for the sink replacement, electrical work, oven work, extractor fan replacement, invoice for mould cleaning, and a photo of the strata bylaw document.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under the Act, the landlord is required to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property.

In the situation of a possible emergency repair to a rental unit, I find it the tenants' responsibility to notify the landlord of an issue dealing with an emergency request and a reasonable response from the landlord is to deal with the request promptly.

The evidence here shows that the tenants contacted the landlord numerous times about multiple issues. I find the landlord has been diligent in attending to the matters raised, for instance, mould clean-up, plumbers called to the rental unit 3 times, rodent issues, an extractor fan, and oven repairs.

In my view of the remaining matters before me, the landlord has given me no reason to doubt that they will continue to diligently address the remaining repairs and/or replacements.

While I find that the tenants submitted sufficient evidence to substantiate that the vanity needs to be replaced due to the damage from the leaks, I find it reasonable not to order the landlord to replace the vanity until their investigation to the plumbing system is complete.

I direct the landlord to keep the tenants informed of any updates to their investigation. Upon completion, based on the results of the investigation, I order the landlord to replace the vanity.

I find the landlords submitted sufficient evidence that the window and door are within the control of the strata corporation.

Tenancy Policy Guideline 21 states, in relevant part, as follows:

The Strata Property Act sets out the duties of the strata corporation and the owners in respect of the property. Section 72(1) requires a strata corporation to “repair and maintain common property and common assets”.

...

Where repairs are required because of a defect originating in the common area, an order that the necessary repairs be done will not be made against a landlord who is the owner or lessor of a strata lot as the owner or lessor has no authority to make the repairs. The owner or lessor is required to ensure that the strata corporation is aware of the problem and take reasonable steps to ensure that the repair is made in a timely manner.

I find that the door and the window are strata corporation issues and I have no jurisdiction to make orders for their repairs.

I direct the landlord to continue to follow-up with the strata corporation in relation to the door and window.

As I have found that the landlord acted promptly in dealing with the emergency repairs requests from the tenants to the extent possible, I find that there is no basis for an order requiring the landlord to make emergency repairs. The landlord is currently dealing with the matters at hand.

As a result, I dismiss the tenants' application for an order for emergency repairs.

Although I dismissed the tenants' application, I find tenants had legitimate concerns at the time they began their application. Awards for filing fees are discretionary. I find it reasonable to award the tenants recovery of the filing fee of \$100.

I **authorize** the tenants a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenants should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

Conclusion

For the reasons provided, I dismiss the tenants' application for an order for the landlord to make emergency repairs, as the landlord has been dealing with those repair requests.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 12, 2023

Residential Tenancy Branch