



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* (Act) for:

1. An Order for the Landlord to make emergency repairs for health or safety reasons. The Tenants have contacted the Landlord to make repairs but they have not been completed under Sections 33 and 62 of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, EK, Landlord's Legal Counsel and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenants' Notice of Dispute Resolution Proceeding package and some evidence served by email on March 31, 2023, the Landlord confirmed receipt, deemed served on April 3, 2023;
- the Tenants' second evidence package served by email on April 5, 2023, the Landlord confirmed receipt, deemed served on April 8, 2023; and,

- the Landlord's evidence package served by attaching a copy on the Tenants' door on April 18, 2023. The Landlord also served their evidence by email on the Tenants also on April 18, 2023, the Tenants' confirmed receipt, deemed served on April 21, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, and Sections 43 and 44 of the *Residential Tenancy Regulation*, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Are the Tenants entitled to an Order for the Landlord to make emergency repairs for health or safety reasons?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on May 1, 2015. Monthly rent is \$1,724.49 payable on the first day of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord brought a witness to the hearing to provide evidence. Tenant TM stated he was not aware the Landlord would be calling a witness. He stated he did not know the evidence the witness would be providing and wanted his objection noted in this matter.

A decision was rendered on March 3, 2023 about this same incident, and the arbitrator found that this rental unit was not currently in need of emergency repairs as defined by Section 33(1) of the Act.

Tenant TM testified that this matter is not necessarily a repair 'in the true sense of repair' but rather a remediation that is necessary. TM relies on a video uploaded by the Landlord. In one room, TM points out that the exterior wall on the left underside of the window has a range of 80% to 94% moisture in the wall. The project manager doing the assessment works for a restoration services company. The project manager stated in

the video that the walls should be dryer before they get painted, he also suggested a certain type of stainblocker paint that has polymers in it that can cover water staining. Tenant TM submits that a remediation should be led by a restoration company and not just the building's handyman.

The Tenants' inspector's report states that, "Aspergillus is specific to water damage and was found at levels higher than the outdoor sample (although the overall count between all spores was lower) this would mean that there is something happening in the room to indicate that water damage has occurred and this number could have increased by the time this report was written."

The Landlord testified that the Tenants left the rental unit in January 2023, and the windows have remained closed since that time. Windows need to be opened periodically, even for short times during colder months, to allow for ventilation. The Landlord knows the exterior wall was rain screened in 2007 and said there is no insulation in the walls. The Tenants' inspector's report notes that, "If the landlord is correct and there's no insulation in the walls the wall could theoretically be dried out without removal if drying equipment was installed right away."

The Landlord argued that the Tenants' inspector's recommendation to remove the window frame and baseboards are against fire regulations. She cannot have openings in the building as these would make it easier for fire to spread, and they would not be following the BC Building Code.

The Landlord asserted that the leak was not substantial. The time of the leak was limited, and it was contained to a small area. There is no need for the Tenants' remediation company's recommendations; however, proper ventilation would be beneficial.

The Landlord spoke about mould in the air in the suite, and she directed back to the lack of ventilation in the rental unit. The windowsills and frames all had mould growing on them. The Landlord said they were not cleaned properly or dried during the colder months. There was condensation on the windows when the outdoor temperatures were dropping below -10°C. As the windows were closed from January to March 2023, and mould was left to grow on the windowsills and frames, the Landlord suspects this is the reason the Tenants' inspector found higher mould readings in the air in the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

On February 6, 2023, the Tenants (male tenant name and female tenant name) applied for emergency repairs for the same water leak incident. That decision determined it was not a case requiring emergency repairs on March 3, 2023. In this matter, the Tenants (male tenant name and male tenant name) applied for emergency repairs under Section 33 of the Act on March 29, 2023.

Section 33 applications are for serious matters and are scheduled on short timelines. These kinds of repairs are defined as urgent, necessary for the health or safety of anyone or for the preservation or use of the property. Emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mould removal, or pest control. Tenant TM testified that this matter is not necessarily a repair 'in the true sense of repair' but rather a remediation that is necessary.

The Tenants left the rental unit in January 2023, the male Tenant said, to allow the building manager to complete the remediation and repairs in his rental unit. During this time, the Tenants' windows were not opened aside from the times the Tenants came back to the rental unit to check their mail. The male Tenant said he purchased a dehumidifier, and they opened the windows when they periodically came back to the suite. I find these brief visits did not allow sufficient time to provide adequate ventilation in the rental unit.

The Tenants' inspector's report does not support that the mould spores found are any of those kinds of mould genus or species that produce toxin or pathogenic compounds. The Tenants also did not testify to having any kinds of susceptibilities to these compounds.

The Landlord stated that the rental unit has not been properly ventilated during the Tenants absence. During this period, mould has been permitted to grow on the windowsills and frames and were not regularly cleaned by the Tenants. I find the Tenants have not adequately maintained the rental unit per their responsibilities noted in Section 32(2) of the Act.

I find the Tenants have not proven on a balance of probabilities that the rental unit needs emergency repairs. I dismiss their application without leave to re-apply.

As the Tenants were not successful in their claim, I do not grant them recovery of the application filing fee.

Conclusion

The Tenants' application for emergency repairs is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 24, 2023

Residential Tenancy Branch