



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **ERP**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) in which the Tenants seek:

- an order for the Landlord to perform emergency repairs on the rental unit pursuant to section 33 of the Act.

The agent (“DS”) for the Landlord and the two Tenants (“CO” and “JH”) attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

JH stated he served the Notice of Dispute Resolution and the Tenants’ evidence (“NDRP Package”) on the Landlord by serving it on DS in-person on April 21, 2023. CO stated she witnessed JH serve the NDRP Package in-person on DS. JH stated he did not receive the NDRP Package. I find that the Tenants have proven, on a balance of probabilities, that the Tenants served the NDRP Package on the Landlord in accordance with the provisions of section 88 and 89 of the Act.

DS stated the Landlord did not serve any evidence on the Tenants for this proceeding.

Preliminary Matter – Addition and Removal of Respondents

At the outset of the hearing, I noted the tenancy agreement stated a different name for the Landlord than the name used by the Tenants in the Application. CO requested that I amend the Application to add the name of the Landlord specified in the tenancy agreement and to remove DS. DS admitted he was the principal of the Landlord and was acting as agent for the Landlord in this proceeding. DS stated, as agent for the Landlord, that the Landlord did not have any objections to the request of CO that I amend the Application.

Rules 7.12 and 7.13 of the RoP state:

7.12 Request that another person be added to a proceeding

In exceptional circumstances, a party may make an oral request at the hearing to add another party.

7.13 Determining that another person be added as a party

At the request of a party under Rule 7.12, the arbitrator will decide whether a person will be added as a party.

In addition, the arbitrator may unilaterally determine that another person should be added as a party.

The newly added party will be added to the proceedings without the need for further revision of the Application for Dispute Resolution.

All Rules of Procedure apply to the newly added party, with the exception of Rules establishing timeframes for the exchange of evidence.

As soon as possible after a party is added to a proceeding, the original applicant(s) and respondent(s) must serve their evidence on the newly added party.

The newly added party must, as soon as possible, serve their evidence on the original applicant(s) and respondent(s) and submit it to the Residential Tenancy Branch directly or through a Service BC Office, and in any event not less than seven days before the reconvened hearing.

DS admitted he was the principal of the Landlord. As such, I find the Landlord was deemed to have been served with the NDRP Package at the time it was served on the DS. Pursuant to Rules 7.12 and 7.13 of the RoP, I order the Application to be amended by removing DS as a respondent and adding the Landlord as a respondent. As the Landlord is deemed to have received the NDRP Package by the Tenants, I find it is unnecessary to adjourn the hearing so that the parties may exchange evidence.

Issues to be Decided

- Are the Tenants entitled to an order for the Landlord to perform emergency repairs on the rental unit?

Background and Evidence

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

The Tenants submitted into evidence pages 1, 2 and 3 of a tenancy agreement between the Landlord and Tenants. The agreement states the tenancy commenced on February 15, 2022, for a fixed term ending January 31, 2023 with rent of \$2,400.00 payable on the 1st day of each month.

CO stated the Tenants have no water supplied to their rental unit. CO stated the Tenants have an infant and the lack of water in the rental unit makes it extremely difficult to use the rental unit for residential accommodation. The Landlord stated the water supply went off because someone had damaged the electrical panel. When I asked, the Landlord stated the water was provided from the municipal water system. The Landlord did not explain why the electrical supply would impact on water from the municipal service.

CO stated the water supply was restored on April 29, 2023 at approximately 3:30 am, and then the water was turned off a few hours later. The Landlord stated the Tenants have been arguing with the tenant ("Adjacent Tenant") who resides in the rental unit adjacent to the Tenants' rental unit. The Landlord admitted the Adjacent Tenant turned off the Tenants water supply from Adjacent Tenant's rental unit. CO stated the Tenants have been obtaining water from the neighbours. CO stated JH sustained an injury to

one of his eyes while transporting the water. CO stated the eye injury required the Tenant to attend at the emergency department of a hospital.

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.

Section 62(3) of the Act states that

The director may make any order necessary to give effect to the rights, obligations, and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 33(1) of the Act states that

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.

The Landlord admitted the water supply to the rental unit was turned off by the Adjacent Tenant. I find the disruption of the water supply to the rental unit constitutes “emergency repairs” under section 33(1) as it is urgent, the are necessary for use of residential property and they relate to damaged or blocked water or plumbing fixtures. I also find the emergency repairs are required.

Section 62(3) of the Act states:

62(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Based on the foregoing, as a delegate of the director I HEREBY ORDER pursuant to section 62(3) of the Act, that the Landlord take immediate steps to restore the water supply to the Tenants' rental unit.

The repairs set out above shall not be considered completed until the Tenants are provided with an uninterrupted supply of water to the rental unit, save interruptions that are in the control of the municipality in which the rental unit is located.

The disruption of the water supply to the rental unit is causing severe hardship to the Tenants and their infant child and the use of the rental unit for residential accommodations. As such, if the Landlord does not complete the repairs within the 6 days as ordered above, then the Tenants are authorized under section 65(1)(f) of the Act to withhold \$77.00 in rent, per day, for each day that the repairs remain uncompleted beyond the 6-day period. These deductions shall continue until the Landlord completes the repairs.

Any accumulated withheld rent may then be deducted from the rent when the Tenants make their monthly rent payment.

Conclusion

For the reasons given above, including the Order made under section 62(3) of the Act, the Tenants claim for emergency repairs is granted.

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: May 1, 2023

Residential Tenancy Branch