



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Century 21 Kootenay Homes (2018)
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on May 8, 2022 seeking an order that the Landlord make repairs for health or safety reasons. This is an expedited hearing. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 2, 2023. In the conference call hearing I informed the parties that this dispute is an expedited process. I explained the hearing process and provided both parties the opportunity ask questions.

Both parties confirmed they received the prepared evidence of the other in advance of the hearing. On this basis, the hearing proceeded.

Issue to be Decided

Is the Landlord obligated by s. 32 of the *Act* to make emergency repairs to the rental unit as requested by the tenant?

Background and Evidence

In the hearing, the Tenant described their standing issue with the paint used in the basement area in the rental unit. They identified their countertop, and an area on the outside of the rental unit as possibly containing lead in the paint.

The Tenant on their own mailed samples of flaking paint from the outside to a firm that tests products for lead content. The outside samples tested significantly for lead content, at 307 ppm. This is shown in the Tenant’s own evidence in the provided report.

The Tenant noted the firm delivered the “gold standard” of testing in order to ensure the accuracy of their test results. The Tenant paid \$25 for each sample.

The Tenant identified another area in the rental unit basement as containing the same green colour as the paint used on the outside of the home. This area’s paint was not tested in similar fashion because the Tenant did not want to pay for this separate test at the same firm.

The Tenant made this Application for dispute resolution because they want the basement area properly remediated. The Landlord in response to the Tenant’s communication stated they would wish to deal with a flooding issue in the basement first, work that would seem to require jackhammering. From the Tenant’s perspective, the lead paint issue needs to be remediated first. This means using a chemical or a particular type of sander to remove the questionable paint still in place in the basement.

The lack of remediation is preventing the Tenant’s use of the basement; they are not able to sublet the basement or acquire roommates because of this issue.

The Landlord presented that they took a sample from the countertop and gave it to a local firm who confirmed it was negative for lead content.

The Landlord ensured a temporary measure was in place in order to prevent the Tenant from accidentally ingesting paint flakes – this was plastic sheeting over the problematic areas. The Tenant took issue with the Landlord installing this method, stating plastic will not do anything and in any case the stairs could not be covered. The Landlord pointed to other means of entry into the home for the Tenant so as to avoid the area, with plastic placement being a recommended method to keep paint flakes or dust from becoming airborne.

The Landlord is aware that something ingested is a concern, meaning if the Tenant is not ingesting it, it’s not a risk or concern; therefore, from the Landlord’s perspective this does not constitute an “emergency” in terms of the urgency to deal with the issue. In response the Tenant pointed to dust being just as concerning as flakes that could be ingested.

The Landlord gave samples (from the countertop and outside) to a local firm for testing. The Tenant questioned the accuracy of the results where the firm is associated with a local large industry. The Landlord reiterated they have done their due diligence on this issue. They pointed to the Tenant’s evidence/guidelines as being from the internet, and

not reflective of the actual situation that would involve testing, as well as the immediate preventative measures involving containment by sealing the area with plastic.

Analysis

The *Act* s. 33 sets out “emergency repairs” as a special category: those that are urgent, and necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- major leaks in pipes or the roof;
- damaged or blocked water or sewer pipes or plumbing fixtures;
- the primary heating system;
- damaged or defective locks that give access to a rental unit; or
- the electrical systems.

On this Application, the burden of proof is on the Tenant. I don’t understand why the Tenant would not want to prove their case in this situation by having a basement sample tested to show the paint contains lead, beyond any doubt. This would expedite the matter more effectively and costs \$25, or alternatively, free at the Landlord’s source. Because the Tenant did not provide this evidence, I am not satisfied that repairs, being of an urgent nature, are necessary. In this situation, I find this evidence, showing a hazard, was necessary to show that remediation of some sort is required. That is aside from any of the repairs matching to the categories set out in s. 33(1)(c).

I find there are no emergency repairs that are needed in this situation, minus evidence showing a level of hazard or risk. I am not satisfied that the Tenant would even accidentally ingest significant particles of paint, even without immediate covering in place which the Tenant also seemed to take issue with.

I find the Landlord has been diligent in following up on the Tenant’s queries throughout and attempting to resolve the situation, in light of other work needed in the basement.

In sum, there is no repair that can be made under this portion of the *Act*. I am not satisfied the situation is urgent, or necessary for health or safety of the Tenant, minus sufficient evidence -- from the Tenant -- showing a particular level of lead in paint that is in the basement area.

For these reasons, I dismiss the Tenant’s claim in its entirety, without leave to reapply.

Conclusion

I dismiss the Tenant's application for the Landlord to make emergency repairs, without leave to reapply.

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

Dated: June 5, 2023

Residential Tenancy Branch