



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PICKET FENCE PROPERTY MANAGEMENT
GROUP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ERP, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order for emergency repairs to be done to the rental unit pursuant to section 33; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary issue

The landlord acknowledge being served with the tenants' Notice of Dispute Resolution Proceedings on May 11, 2023 via email. The landlord also received additional evidence from the tenants on May 26th, May 29th and June 5th.

Residential Tenancy Rule 10.2 states:

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

I determined that the tenants submitted evidence to the Residential Tenancy Branch and exchanged it with the landlord after filing the application for dispute resolution on May 10th. As the evidence submitted and exchanged after May 10th does not comply with rule 10.2, I exercised my discretion to not consider it for this decision. The tenant sought an exemption for a single document, “true_quote.jpg” which the landlord acknowledged having in her evidence package. The landlord was willing to admit that document and I have allowed it’s inclusion in this decision.

The tenants acknowledge receipt of the landlord’s evidence package and will be referred to in this decision.

Issue(s) to be Decided

Should the landlord be required to repair the roof of the rental unit?
Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party’s evidence.

While I have turned my mind to all the allowed documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental unit is a manufactured home located on an 80-acre farmland. The tenant SR testified that the tenancy began on September 12, 2022.

The tenant gave the following testimony. On February 27, 2023, the tenant noticed water coming through the ceiling and she heard water in the walls of the manufactured home. No photos or video capture of the leaks was provided to me for this hearing.

Employees of the farm came to investigate the leak and repaired it by putting a piece of roof ceiling over the leak and sprayed it with spray foam in early March 2023. The tenants are unhappy with the repairs as they could still hear water in the walls. They are unsure how much water is coming into the walls. The tenant had a contractor come out and do another temporary patch but he believes the roof won't last another winter.

On May 12th, the landlord called a roofing company to come, inspect and provide a quote to repair the roof. Because there were no active leaks at that time of the year, they left without doing any work. The tenants argue that the roofer could not determine if there are leaks when it's not raining.

The landlord testified that 2 of their maintenance people signed statements indicating they visited the rental unit many times in March and April. They went up on the roof and secured all the roof vents, plugged ant holes, sprayed the wall with a mildew spray and installed new panelling after removing the old panelling in the living room. No further leaks were detected by the maintenance personnel.

A roofing contractor was hired to inspect the roof on May 12, 2023 and a copy of the roofing contractor's quote to repair the roof was provided as evidence. Although the quote states "*leak into living space/various*" the landlord obtained a subsequent email from the roofing contractor on May 29, 2023 which states "*our tech who conducted the site visit was not made aware of any active leak, I gathered that from the pictures of previous repairs attempted.*"

The landlord sent another contractor, SF and SF provided an email dated May 16, 2023 to the landlord. In that email, SF advises he did the following work:

So we attended a leak from the roof at rear of unit . We exposed the ceiling dried the area out sprayed and cleaned affected area. The ceiling was fully dried and we installed panels back on ceiling . We did a quick inspection on roof and found no major points of ingress . All in all the unit seems to be fine and free of leaks . As precaution we also reinforced exterior north west corner with some flashing and pressure treated wood . We also went under trailer to inspect floor, seemed in decent shape there where some previous repairs. We added some blockers to support north west corner as precaution . Lastly we added Some door trims to help seal doors from drafts and leaks

Analysis

In a dispute resolution proceeding, the onus to prove their case falls upon the applicant. The standard of proof is on a balance of probabilities which means that the applicant

must provide sufficient evidence to satisfy me their version of the facts is more likely to be the truth.

Pursuant to section 32 of the Residential Tenancy Act, 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 RTA defines "emergency repairs" as repairs that are urgent, 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.

In the matter before me, there is no denying that a leak in the roof constitutes an emergency repair. However, the evidence provided to me is insufficient to establish that there is an active leak in the roof presently.

The landlord provided statements from a roofing contractor who states that he “*was not made aware of any active leaks*”. This in itself does not mean there are no leaks, it only indicates that no leaks were pointed out to him. I take this statement as inconclusive since I accept the tenant’s reasoning that the roof was dry and free from rainwater when it was inspected.

I also find the statement of the SF inconclusive as he states he found no major points of ingress and that the unit *seems* to be fine and free of leaks. Once again, the fact that SF couldn’t locate leaks on a non-rainy day doesn’t necessarily mean that the roof is not leaking.

Despite this, the onus is on the tenants to establish that, as of the date of this hearing, there is a major leak in the roof requiring emergency repairs. In evidence, the tenants did not provide a single photo of water coming into the rental unit or any video evidence depicting a leak in the manufactured home. The tenant testified that she could hear the leaks coming from the walls but failed to supply me with any video recording of it.

Gathering evidence to support their application should have been an easy task, as all the tenants needed to give me was video or photographic evidence of the leaks inside the rental unit. This evidence could have been gathered when it rained or even on a sunny day by pointing a hose onto the roof and recording the leaks inside. No such evidence of leaks inside the rental unit was provided for this hearing.

Given the lack of supporting evidence, I am not satisfied there is an emergency repair requiring an order that the landlord needs to fix. I dismiss this application with leave to reapply.

Conclusion

This application is dismissed with leave to reapply.

As the tenant's application was not successful, the filing fee will not be recovered.

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: June 06, 2023

Residential Tenancy Branch