



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding ACE AGENCIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on August 9, 2023 seeking emergency repairs to the rental unit. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 5, 2023.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. The Landlord as the Respondent confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant.

Preliminary Matter – Tenant’s evidence to the Landlord

The Tenant presented that they sent their evidence for this hearing to the Landlord; however, the Landlord stated they did not receive that evidence. The Tenant’s own indication on the record is that they forwarded the notice from the Residential Tenancy Branch, on August 12, containing the Notice of Dispute Resolution Proceeding for this hearing. There is no record the Tenant sent evidence to the Landlord.

I exclude the Tenant’s evidence for this matter from consideration. The Tenant did not prove they disclosed that to the Landlord as required. Thankfully, the Landlord was very familiar with the issue and no picture or video evidence was necessary for the purposes of this decision.

Preliminary Matter – the nature of needed repairs

The Tenant described two separate ongoing issues within the rental unit. I find one issue – that of the garage repair -- is not urgent and does not fit into the considerations listed in s. 33(1)(c) of the *Act* where “emergency repairs” are listed. I find the “rental unit”, being the applicable term therein, does not include the garage.

The *Act* s. 64(3) permits me to amend an application for dispute resolution. Given that the Tenant described some required repairs for the garage that are not an emergency, I amend the Application to add their request for regular repairs. Both repair issues receive full consideration with respect to the rights of the Tenant and the obligations of the Landlord concerning repairs.

Issue(s) to be Decided

Is the Tenant entitled to an order requiring the Landlord to make emergency repairs for health or safety reasons?

Is the Landlord obligated by s. 32 of the *Act* to make repairs as requested by the Tenant?

Is the Tenant eligible for reimbursement of the Application filing fee?

Background and Evidence

Both parties verified the basic details of the tenancy agreement at the start of the hearing. The Tenant pays \$1,348.50 per month for the tenancy that started on October 1, 2016.

The Tenant described extant issues needing repair in the rental unit. The urgent issue from the Tenant’s perspective was that of the bathtub faucet that continued to run unceasingly. As stated on their Application:

2 Weeks ago water from Tub faucet would not turn off, we have [sent] numerous photos and video to no response/ eta. Water is non stop and if [plugged] would will the tub within 4 hours and over flow. This has also caused severe rot and mold.

In the hearing the Tenant described the bathtub “slowly leaking about 2 months” and “now water is pouring out & can’t turn [it] off”. They had 2 plumbers visit who stated to the Tenant that the faucet needs to be replaced.

The Tenant sent their first email to the Landlord to inform about this issue on July 18.

In the hearing the Landlord acknowledged the need for replacement yet added that this would be more of a major repair at this rental unit that is “very old”. They cited their lack of access as the reason that the replacement has not yet been completed.

The Landlord put forward the date of September 16 as a reasonable timeline for them to complete the necessary work.

The other issue the Tenant was requesting for repair was that of the garage wall, stated thus on the Tenant’s Application:

4 Months ago our Garage was partially burned due to neighbors fire, Garage is exposed and unsecure. Water and debris can easily come in, cant store anything in there due to wide open side.

The Tenant described having to empty the garage, with the side of the structure still unsecure, and “a bit of damage to the roof”. The structure on the side needs to be “sheathed up” in common construction parlance – this involves sheets of plywood across the gap, instead of the current tarp covering.

The Landlord maintained that they had approved for the Tenant to proceed on an immediate repair to secure the structure. The Tenant stated they did not proceed based on no call or other message from the Landlord. The Landlord stated they approved the expense of up to \$500 for the purpose of securing the garage structure.

Analysis

The *Act* s. 33(2) sets out “emergency repairs” as a special category: those 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.

I find the statements from the Tenant – verified by the Landlord – are sufficient to establish that this is an issue of a damaged plumbing fixture, as listed in s. 33(2). I find as fact that the Tenant previously made this issue known to the Landlord. I accept that the Landlord has not completed this replacement to date because of the lack of access to the rental unit.

I find the Landlord has pledged to complete the required replacement by September 16, 2023.

I find positively that the issue is one that the *Act* s. 33 covers. For the purposes of the Landlord's entry, the *Act* s. 29(1)(f) allows for entry by a landlord "necessary to protect life or property". I find this applies in that it is in the Landlord's best interest to complete the job to completely avoid water damage because of the damaged plumbing fixture.

Also, I authorize the Landlord, by s. 29(1)(d), to enter the rental unit for this specific purpose should the Tenant not be available for the plumber's entry. The parties, hopefully, can reach an established date for the Landlord to complete the required plumbing fixture replacement; otherwise, s. 29(1)(d) and s. 29(1)(f) apply.

Covering repairs more generally, the *Act* s. 32 provides that a landlord must provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law.

In the hearing, the Landlord allowed the Tenant to incur expenses up to \$500 for the Tenant to complete the securing of the garage wall. I order the Tenant to complete the necessary securing of the garage wall by September 30, 2023. They must provide a complete dated invoice to the Landlord for materials and any other cost incurred, up to \$500 only – the Tenant stated they could manage the job for this amount. By s. 72(2)(a), the Tenant may deduct the final amount from one future rent payment, as presented to the Landlord on a dated, complete invoice.

I find it was necessary for the Tenant to make this Application in order to resolve the issues completely; therefore, I grant the Tenant may deduct the Application filing fee -- \$100 – from one future rent payment, as per s. 72(2)(a) of the *Act*.

Conclusion

The Tenant's Application for emergency repairs is granted, as set out above.

The Tenant's amended Application for repairs is granted, as set out above.

I make this decision on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 6, 2023

Residential Tenancy Branch