

## **DECISION**

### **Introduction**

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated claims. I considered only the Tenants' request for a Monetary Order for the cost of emergency repairs to the rental unit and to recover the filing fee. The Tenants' other claim is dismissed, with leave to reapply.

This hearing also dealt with the Landlord's Application for Dispute Resolution under the Residential Tenancy Act (the Act) for:

- a Monetary Order to repair damages to the rental unit
- a Monetary Order for money owed or compensation for damage or loss
- authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and evidence for Tenants' Application**

When the Landlord was asked during the hearing, if they received the Proceeding Package and evidence from the Tenants, they testified that they did not receive the Proceeding Package and evidence.

Tenant D.K.M. testified that they sent the Landlord the Proceeding Package and evidence to the Landlord's address for service the Landlord provided on the Condition Inspection Report #RTB-27 dated April 30, 2023. The Tenant provided the Condition Inspection Report #RTB-27 as evidence.

I find that Landlord D.R. was served on November 13, 2023, by registered mail in accordance with section 89(1) of the Act and is deemed served on the fifth day after the registered mailing in accordance with section 90 of the Act. The Tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. I have included the Canada Post tracking number on the cover page.

### **Service of Landlord's evidence for Tenants' Application**

When Tenant D.K.M. was asked during the hearing if they received the Landlord's evidence for their application, they testified that they did not receive the Landlord's evidence.

The Landlord Testified that they sent Tenant D.K.M. their evidence by registered mail.

The Landlord did not send their evidence to Tenant Z.M.

The Landlord did not serve both Tenants their evidence as required in accordance with Residential Tenancy Branch Rules of Procedure 3.16.

Therefore, the Landlord's evidence will not be considered as it was not served to both Tenants in accordance with Residential Tenancy Branch Rules of Procedure 3.16.

### **Preliminary Matters**

The Landlord testified that they served one Notice of Dispute Resolution Proceeding Package to both Tenants.

The Landlord did not serve each Tenant separately as required under Residential Tenancy Policy Guideline 12.

Residential Tenancy Policy Guideline 12 states that the purpose of serving documents under the Legislation is to notify the parties named in the dispute of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding, or a review. Another purpose of providing the documents is to allow the other party to prepare their response for the hearing and gather documents they may need to serve and submit as evidence in support of their position. All parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately.

The Landlord's application is dismissed, with leave to reapply.

### **Issues to be Decided**

Are the Tenants entitled to a Monetary Order for the cost of emergency repairs?

Are the Tenants entitled to recover the filing fee from the Landlord?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties testified that this tenancy began on June 30, 2022, with a monthly rent of \$1,900.00, due on the first day of the month. The Tenants paid a security deposit of \$750.00.

Tenant D.K.M. notified the Landlord by text message on January 28, 2023, that there was a leak under the bathroom sink.

The Landlord notified Tenant D.K.M. that a plumber would be attending on January 28, 2023, between 1:00 p.m. to 4:00 p.m.

On January 28, 2023, at 9:59 a.m. the Landlord sent the Tenants a text that states, "Actually they'll fix it right away." The Tenants provided this text as evidence.

The Plumber attended the unit and fixed the leak. The Tenant was provided with an invoice of \$682.50 from the plumber and paid the full amount to the plumber. The Tenant provided the invoice dated January 28, 2023, as evidence.

After the plumber left the unit, Tenant D.K.M. contacted the Landlord to advise them that they paid the plumber \$682.50 for the emergency repair.

The Tenants provided the Landlord a demand letter for reimbursement for the repair dated March 16, 2023, along with the invoice for the repair dated January 28, 2023. The Tenants provided the demand letter as evidence.

The Landlord does not agree to having to pay for the emergency repair because the plumber was to provide the Landlord a quote for the repair before it was completed. The Tenants paid for the repairs before consulting with the Landlord.

The Landlord also does not agree to having to pay for the emergency repair because the Tenants agreed in their tenancy agreement (clause 10) that the Tenants were responsible for all repairs.

## **Analysis**

### **Are the Tenants entitled to a Monetary Order for the cost of emergency repairs?**

Section 33(3) of the Act allows for a Tenant to complete an emergency repair when the Landlord has not completed the emergency repair in a reasonable amount of time and the Tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the Landlord as the person to contact for emergency repairs.

Section 33(1) of the Act defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property and for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

The Landlord testified that the Tenants should be responsible to pay for bathroom sink leak repairs because they agreed in their tenancy agreement to being responsible for all repairs. Section 32 of the Act states a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law. Section 5 of the Act states Landlords and Tenants may not avoid or contract out of this Act or the regulations and any attempt to avoid or contract out of this Act or the regulations is of no effect. Therefore, this would be considered contracting out of the Act and is of no effect as stated in section 5 of the Act.

Section 33(5) of the Act states a Landlord must reimburse a Tenant for amounts paid for emergency repairs if the Tenant claims reimbursement for those amounts from the Landlord and gives the Landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The Tenants notified the Landlord of the emergency repair on January 28, 2023. That same day, the Landlord texted the Tenants a text that stated, "Actually they'll fix it right away." The Tenants provided this text as evidence. The plumber that was contacted by the Landlord, completed the repair and provided the Tenants an invoice. The Tenant paid for the repair prior to the plumber leaving and then contacted the Landlord to let them know they paid for the repair. The Tenants provided the Landlord the detailed invoice of the repair that needed to be completed for the bathroom sink leak and a demand letter requesting reimbursement for the repairs.

The Tenants provided the Landlord a written account of the emergency repair and they provided the Landlord the invoice that shows the amount claimed as required under section 33(5) of the Act to be able to claim for reimbursement for the emergency repair.

Therefore, I find the Tenants are entitled to a Monetary Order for the cost of emergency repairs for the bathroom sink leak under section 33 of the Act.

### **Are the Tenants entitled to recover the filing fee from the Landlord?**

As the Tenants were successful in their application, the Tenants are entitled to recover the \$100.00 filed fee paid for this application under section 72 of the Act.

### **Conclusion**

I grant the Tenants a Monetary Order in the amount of **\$782.50** under the following:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for the cost of emergency repairs under section 33 of the Act	\$682.50
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$782.50</b>

The Tenants are provided with this Order and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 2, 2024

---

Residential Tenancy Branch