DECISION

Introduction

This hearing dealt with the Tenant's November 15, 2024 Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") for:

- the Landlord to make emergency repairs for health or safety reasons

On November 15, 2024, the Tenant filed a second Application for compensation for the cost of emergency repairs in the rental unit. Due to the priority of the Tenant's first Application being urgent, the two files were not initially joined for a single-session hearing.

By interim decision dated November 27, 2024, I joined the Tenant's second Application to that of their first. This secondary matter proceeded to a reconvened hearing on December 12, 2024.

The Tenants (hereinafter, the "Tenant") and the Landlords (hereinafter, the "Landlord") attended both scheduled hearings.

Service of Notices of Dispute Resolution Proceeding

In both scheduled hearings, I confirmed the Landlord received each of the Tenant's two Notices of Dispute Resolution Proceeding.

In the November 27 hearing, I confirmed the Landlord received the emailed attachments from the Tenant, constituting the Tenant's service of evidence to the Landlord.

Following from my instructions in the November 27 Interim Decision, I confirmed the Landlord provided further evidence to the Tenant prior to the December 12 reconvened hearing. This was within the specified timeline for doing so.

I conclude there were no issues with service from one party to the other in this hearing process.

Issues to be Decided

- Is the Landlord obligated to make emergency repairs for health or safety reasons?

- Is the Tenant entitled to compensation for emergency repairs in the rental unit?

Background and Evidence

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

The Landlord and the Tenant each provided a copy of the tenancy agreement that is in place. The tenancy started on December 1, 2021, for the monthly rent of $1,900, due on the first day of each month. A separate addendum to the tenancy agreement added two more tenants, by name, for June 1 and July 1, 2024.

The agreement, in standard template form, provides for emergency repairs, reflecting what is set out in the *Act*. The first page of the agreement sets out the Landlord's daytime phone number.

In the Tenant's Application for emergency repairs, filed on November 15, 2024, the Tenant set out the following:

> On Oct 8, we notified the landlords of an odour in the suite that was causing health concerns since Sept 29, and requested an investigation and the required repairs. On Oct 20, at our request, plumbers came to assess then replace the wax seal and caulking on our toilet. They advised us to also re-seat and replace the wax seal on the 2 toilets in the upper level suite, which they were not given access to on the day. We are requesting the remainder of the sewage and plumbing issues be addressed.

The Tenant and Landlord each provided detailed timelines and evidence in the form of their communication on the issue of plumbing repairs, and the priority thereof.

In the November 27 initial hearing session, the Tenant described the problem from their perspective, and reiterated that the problem was continuing.

The Landlord committed to a firm date of December 20, 2024 for plumber-recommended preventive maintenance, that being seals on the toilets in each of the two rental units in the rental unit property.

In the December 12 reconvened hearing, the Landlord confirmed that such work, as per the Tenant's original Application, was pending, set for two days following the scheduled reconvened hearing (*i.e.*, December 14).

In the Tenant's second Application, they made the claim for $1,133.30 compensation, noting the following:

> On Oct 8, we notified the landlords of the odour in the suite causing health concerns since Sept 29, 2024. We requested a plumber to investigate. The landlords inspected the suite on Oct 8, 2024 and on Oct 15, 2024, without a technician, and stated there was no issue or need for repairs. On Oct 16, 2024, we hired a drainage technician to clear the bathroom sink pipe, which was blocked. On Oct 20, 2 more plumbers came to further assess things, then replace the wax seal and caulking on the toilet.

The Tenant provided a copy of the invoices:

- Oct. 16: $454.65 – "bathroom sink gurgles when filled up. Augured from sink and roof vent, still gurgles. P-trap seems to syphon, recommend send plumber to check trap."

- Oct. 21: $325.85 – "drain cleared bathroom sink and kitchen sink" – "tenant will speak with landlord about requested work" – "recommendations: replace the wax seal for 3 toilets"

- Oct. 21: $352.80: "remove toilet downstairs that the [?] nut and bolts was rusty and come out from their [?] toilet was free and also water supply line was rusty" – "put 2 new wax ring and . . . water supply line . . .tested good" [other writing illegible]

- Oct. 21: $29.95 – invoice for 1 pack of 2 filters, $31.45 total

The Tenant provided a timeline of events:

- Oct 7: smell most present in the bathroom – sent email to Landlord about the issue

- Oct 8: Tenant contacts natural gas service provider about issue, who confirmed there was no gas leak

- Oct 9: Landlord's email provides that the Landlord will attend on the following day – Landlord did not confirm need for plumber, instead asking questions about the issue – Landlord visited the rental unit that evening for an inspection

- Oct 13: Tenant contacted plumbers for quotes

- Oct 14: Landlord inspection in the rental unit

- Oct 16: plumber arrived to augur the bathroom sink (as in invoice) – in the hearing, the Tenant noted the Landlord was not responding, so the Tenant initiated repairs on this date – the Tenant in the hearing also noted they felt intimidated, so did not present this invoice immediately to the Landlord

- Oct 21: Tenant contacted the Landlord twice (8:50 & 9:30am) – Tenant contacted plumber to attend, followed by two plumber visits on same day – by afternoon, Landlord clarified that they did not give permission for repairs, and "that this is not an emergency repair"

- Oct 24: Landlord attended with a plumber for a brief visit

Throughout this timeline the Tenant noted continuing effects of the odour present in the rental unit because of the plumbing issue. The Tenant provided a supplementary timeline that referenced emails and their audio recordings of conversations with the Landlord about the issues.

Of note, the Tenant described the Landlord stating that the Tenant would have to pay should a plumber not locate any difficulty. Also of note, the Tenant described the issue to the Landlord on Oct 8 as being an emergency repair issue. The Tenant made a written request for emergency repairs on Oct 20; by Oct 21 the Landlord rejected the notion of an emergency repair and did not consent, after the fact, to the Tenant's repairs of that date.

In response, the Landlord provided their own timeline which noted the following:

- confirmed that the Tenant, by Oct 8, labelled the issue as an emergency repair

- one of the Tenant's confirmed a garbage odour, notably clearing up after removal of garbage from an outside vent-blocking location

- the Landlord checked into the issue on Oct 8, then consulted with a plumber separately, and visited again for an inspection on Oct 15 – each time, the Landlord noted no distinct odour and no signs of clogging or water leaks

- on Oct 20 the Landlord received the Tenant's invoice for the Oct 16 plumbing work – without notifying the Landlord prior, and without the Landlord's consent –

on this particular invoice, the Landlord noted there is no note to indicate there was a present odour, as they verified in their Oct 15 visit

- on Oct 21 the upstairs tenant notified the Landlord that a plumber was again on site and also working in the upstairs unit – the Landlord again told the Tenant they did not consent to these repairs, not being an emergency repair
- the Tenant calls in the morning of Oct 21 were marked as “no caller ID”
- Oct 24: another plumber inspected the rental unit, with everything ok, and then provided a report to the Landlord on Nov 21.

In summary, the Landlord noted:

- they inspected the unit initially within 24 hours after the Tenant’s first notice
- they attended with a plumber to investigate the issue – there was no sound, sewer gas, or water leaks, and no clogged drains/vents.
- the Tenant arranged the plumber on Oct 16 without the Landlord’s knowledge; the Landlord found out about this only on Oct 20
- the Landlord learned of a subsequent plumber visit initiated by the Tenant on the day of, Oct 21

in the hearing, the Landlord maintained that there was no evidence of urgency in this situation, being preventive maintenance in nature, and they did not give permission for the Tenant to go ahead with repairs.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Is the Landlord obligated to make emergency repairs for health or safety reasons?

From the Landlord’s stated intention in the November 27 hearing, and confirmed again in the December 12 reconvened hearing, I find the Landlord and Tenant settled the matter of emergency repairs, being in this case more minor repairs *i.e.* preventive maintenance requiring the work of a plumber.

Is the Tenant entitled to compensation for emergency repairs in the rental unit?

The *Act* s. 33(2) 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 the 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.

The *Act* s. 33(3) allows for a tenant to complete emergency repairs when a landlord has not undertaken the task in a reasonable amount of time. This occurs after 2 attempts at communication to a landlord from a tenant.

The *Act* s. 33 also sets out:

> (4) A landlord may take over completion of an emergency repair at any time.
>
> (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
>
> (a) claims reimbursement for those amounts from the landlord, and
>
> (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
>
> (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:
>
> (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
>
> (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
>
> (c) the amounts represent more than a reasonable cost for the repairs;
>
> (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the repairs in question, undertaken by the Tenant on their own initiative on October 16 and October 21, were not emergency repairs. I find, as per s. 33(6)(a), that the Tenant made repairs before the Landlord had the opportunity to make repairs within a reasonable amount of time.

I find that the *Act* s. 33 does not apply to this scenario. The Tenant brought about repairs on their own initiative, without the Landlord's consent or approval. These were not repairs that were urgent in nature, and not concerning major leaks or damaged/blocked water/sewage pipes.

For the plumber visit on October 16, I find the Tenant did not make attempts to contact the Landlord to advise of pending repairs in advance. There is no record of attempts to contact the Landlord from the Tenant. The Landlord learned of these repairs when the Tenant forwarded the invoice on October 20.

For the plumber visits on October 21, the Landlord learned of the plumber's visit on that same day. I find the Tenant contacted the Landlord in the morning; however, those calls were not readily identifiable to the Landlord, being an unidentified number. I find this was not reasonable in the circumstances, with no record of a voicemail or other notification via messaging to the Landlord on that morning. Moreover, the Tenant did not afford the Landlord a reasonable amount of time to make repairs which is the requirement set out in s. 33(3)(c).

I dismiss the Tenant's claim for compensation related to the sum total for these repairs. They were not emergency repairs related to major leaks in pipes, or damaged or blocked water/sewer pipes or plumbing fixtures. For the consideration concerning the definition of "emergency repairs", as set out in s. 33(1)(c), the Tenant did not provide sufficient evidence to show damaged or blocked water. I find the Landlord credible on their account of visiting the rental unit in short order and making that assessment.

An otherwise persistent odour, as uncomfortable as that may be, though of dubious origin, does not qualify as an emergency repair. I find the odour was the primary source of the Tenant calling on plumbers to attend in short order and without the Landlord's knowledge, and any work undertaken by a plumber stemming from that was not due to a fundamental difficulty involving damaged/blocked pipes or fixtures, or major leaks. The evidence, in the form of plumber's invoices, does not support this notion. I conclude the work undertaken was preventive maintenance, not emergency repairs.

Also, available to the Tenant this whole time was their right to bring the matter forward to the Residential Tenancy Branch on an expedited basis. The Tenant brought the first application in this matter to the Residential Tenancy Branch on November 15, after the

October 16 and October 21 repairs were completed. For clarity in this matter, and certainty regarding their rights in this scenario, the Tenant had the opportunity to bring the matter forward for a determination, yet did not pursue that prior to hiring the service of a plumber and paying for that, unbeknownst to the Landlord.

For these reasons, I dismiss the Tenant's Application for compensation, without leave to reapply.

Conclusion

I conclude the matter of necessary repairs, being preventive maintenance, was settled between the parties, as set out above.

I dismiss the Tenant's Application for compensation without leave to reapply.

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

Dated: January 10, 2025

Residential Tenancy Branch