

Introduction

- [1] On October 10, 2023 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) dated October 7, 2023 (the "Application") with the Residential Tenancy Office (the "Rental Office") requesting reimbursement for emergency repairs.
- [2] The Tenant is seeking reimbursement in the amount of **\$409.79** for emergency repairs the Tenant paid for out of pocket.
- [3] All relevant documents (including the Notice of Hearing and Evidence Package) were properly served on the parties in accordance with subsection 100.(1) of the *Act*.
- [4] On November 23, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared, representing themselves. The Representative appeared, representing the Landlord.

Issue to be Decided

- i. Is the Tenant entitled to a reimbursement for emergency repairs?

Summary of the Evidence

- [5] In September 2020 the parties entered into a written fixed term tenancy agreement for the Residential Property. Rent is \$1,700.00 due on the first day of the month. A security deposit of \$1,700.00 was required and paid.

Tenant's Evidence and Submissions

- [6] The Tenant submitted 5-pages of documents into evidence including a written submission, invoices dated July 18, 2022 and October 3, 2023, and e-mails between the parties.
- [7] On October 1, 2023 the Residential Property's kitchen sink clogged. The Tenant attempted to fix the clog without success. The Tenant contacted a plumber and the plumber fixed the issue.
- [8] The Tenant paid the plumber for the plumbing services. On October 6, 2023 the Tenant e-mailed the Landlord and informed him about the plumbing issue. The Tenant attached the invoice to the e-mail and requested the Landlord reimburse him for the cost.
- [9] The Tenant testified that he does not have the Representative's contact information and generally would only communicate with the Landlord.

Landlord's Evidence and Submissions

- [10] The Landlord did not submit any documentary evidence. However, the Representative appeared at the hearing and provided testimony on behalf of the Landlord.
- [11] The Representative testified that he communicates with the Tenant regularly and that the Tenant has his contact information. The Representative testified that the Tenant never contacted the Landlord and/or himself regarding the plumbing issue.
- [12] The Representative testified that the clogged sink was the Tenant's fault and that would not be an emergency repair.

Analysis

[13] The Application is made in accordance to section 75 of the *Act* and is seeking reimbursement for emergency repairs pursuant to section 29 of the *Act*. The relevant clauses instruct as follows:

29. Emergency repairs

- (1) *In this section, “emergency repairs” means repairs that are*
- (a) *urgently required;*
 - (b) *necessary for the health or safety of anyone or for the preservation or use of a residential property; and*
 - (c) *made for the purpose of repairing*
 - (i) *leaks in pipes or the roof,*
 - (ii) *damaged or blocked water or sewer pipes or plumbing fixtures,*
 - (iii) *the heating system,*
 - (iv) *damaged or defective stairs and entrances,*
 - (v) *damaged or defective locks or devices that give access to a rental unit,*
 - (vi) *the electrical system, or*
 - (vii) *in prescribed circumstances, a rental unit or residential property*

Landlord shall provide contact information for repair person

- (3) *The landlord shall provide the name and contact information of a person the tenant is to contact for emergency repairs and shall post that information in a common area of the residential property.*

Tenant may have emergency repairs made

- (4) *A tenant may have emergency repairs made only when all of the following conditions are met:*
- (a) *emergency repairs are needed;*
 - (b) *the tenant has made reasonable attempts to provide notice of the need for emergency repairs to the contact person referred to in subsection (3);*
 - (c) *following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

Landlord shall reimburse tenant

- (6) *A landlord shall reimburse a tenant within seven days for amounts paid for emergency repairs if the tenant*
- (a) *claims reimbursement for those amounts from the landlord in writing; and*
 - (b) *gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.*

Non-application of subsection (6)

- (7) *Subsection (6) 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 (4) were met;*
 - (b) *the tenant has not provided the account and receipts for the repairs as required under clause (6)(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.*

- [14] The Application is seeking reimbursement for emergency repairs in the amount of \$409.79. In such applications, it is the person(s) making the application to prove, on a balance of probabilities, their entitlement for reimbursement. This means the applicant must provide sufficiently clear, convincing and cogent evidence to prove their entitlement.
- [15] The Officer concludes that the Tenant is not entitled to reimbursement for emergency repairs. The Officer comes to this conclusion based on the testimony of the parties. The Tenant testified that he did not contact the Landlord or the Representative when he became aware of the plumbing issue. The Tenant was required under clause 29.4(b) and (c) of the *Act* to make a *reasonable attempt* to provide notice to the Landlord or the Representative regarding the need for emergency repair and to provide *reasonable time* to the Landlord to make such repairs. The e-mail conversation submitted into evidence establishes that the Tenant reached out to the Landlord on October 6, 2023. This was six days after the Tenant became aware of the plumbing issue, and had the issue fixed by a professional plumber.
- [16] Further, the Officer concludes that the evidence by way of testimony from the parties suggests that the nature of the repair (a clogged kitchen sink), does not rise to a level “emergency” as required by sub-subsection 29.4(a) of the *Act*. The Officer further notes that the nature of the issue calls into question whether or not it was primarily caused by the actions or neglect of the Tenant and/or a person permitted on the Residential property by the Tenant. The evidence is inconclusive of this point, however, sub-subsection 29.7(d) of the *Act* would bar the Tenant from such reimbursement as well if established.
- [17] Therefore, the Officer concludes that the Tenant is not entitled to reimbursement of emergency repairs pursuant to sub-subsection 29.7(a) of the *Act*. That is, the Tenant made the repairs before providing notice to the Landlord, and/or the Representative, and did not provide the Landlord and/or the Representative a reasonable amount of time to make the repair. The Application is denied.

Conclusion

- [18] The Application is denied.

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.

DATED at Charlottetown, Prince Edward Island, this 4th day of December, 2023.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20** days of this Order. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.