



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, OPT, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to make emergency repairs for health and safety reasons, to obtain an order of possession, to have the landlord comply with the Act and to recover the filing fee from the landlord.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

At the outset of the hearing, the tenant confirmed that he does not need to obtain an order of possession.

### Issues to be Decided

Should the landlord make emergency repairs for health and safety reasons?

Should the landlord be ordered to comply with the Act?

Is the tenant entitled to recover the cost of the filing fee from the landlord?

### Background and Evidence

The parties entered into a tenancy agreement. Rent in the amount of \$825.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant.

At the outset of the hearing the tenant stated that he has withheld rent as he feels justified in doing so. The tenant stated that he will be vacating the rental unit on Friday October 17, 2014.

The tenant testified that the landlord has failed to fix the infiltration of water from the ceiling that is coming into his rental unit.

The landlord testified that the restoration company has attended and made the necessary repair, however, there are minor items left to be completed, such as one wall needs to be painted and that work is in progress.

The tenant did not deny the restoration company has been attended and that the water is no longer entering the rental unit. The tenant stated the work has taken too long and items are still needed to be completed.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant is seeking orders to have the landlord comply with the Act, and make emergency repairs. However, I find it not necessary for me to make these orders, as the evidence supports that the landlord has had the restoration company attend and make repairs to the rental unit to stop the water from entering the rental unit and are in progress of completed the cosmetic repairs. I find that the tenant has failed to prove the landlord has violated the Act. Therefore, I dismiss the tenant's application.

As the tenant has not been successful with their application the tenant is not entitled to recover the filing fee from the landlord.

### Caution

In this case, the tenant has admitted that they have withheld rent. However, the tenant does not have the authority under the Act to deduct all or a portion of the rent.

The tenant is caution that they must comply with section 26 of the Act.

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

### Conclusion

The tenant's application is dismissed.

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: October 15, 2014

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Residential Tenancy Branch

