



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 479711 ALBERTA LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP RP PSF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on January 15, 2015, to obtain Orders to have the Landlord: make emergency repairs for health or safety reasons; to make repairs to the unit, site, or property; and to provide services or facilities required by law.

The hearing was conducted via teleconference and was attended by the Tenant, the Tenant's witness, and two agents for the corporate Landlord, hereinafter referred to as Landlords. For the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

Each party gave affirmed testimony and confirmed receipt of evidence served by the Tenant. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Landlord be ordered to repair the rental unit, site, or property?

### Background and Evidence

The Tenant submitted undisputed documentary evidence that she entered into a fixed term tenancy that began on September 1, 2013, indicating that rent of \$625.00 is due on or before the last day of each month and on September 1, 2013, the Tenant paid \$312.50 as the security deposit.

The Tenant's witness testified that he was at the Tenant's rental unit on January 21, 2015, at which time he saw a "disgusting mess" which involved a plugged toilet. He was at the unit again today, January 22, 2015, when just prior to the hearing the Landlord attended the rental unit with his friend. When they went in the bathroom the Landlord refused to deal with the plugged toilet and left. Neither Landlord wished to question the Tenant's witness so the witness was dismissed from the hearing.

The Tenant testified that she had a problem with her toilet being plugged off and on since April 2014. The manager back in April 2014 refused to deal with the issue of her plugged toilet so the Tenant filed for dispute resolution. They attended a hearing sometime in May 2014 to resolve this issues and the previous manager unplugged the toilet either just before or just after that hearing. The Tenant argued that the previous manager did not bring in a licensed plumber to deal with the situation at that time.

The Tenant submitted that her toilet plugged again on January 9, 2015, and at that time she put her request for repair in writing and hand delivered it to the existing resident manager. She stated that the resident manager refused to deal with her plugged toilet because of the previous issues they have been dealing with and told the Tenant that it was the Tenant's responsibility to deal with the plugged toilet. The Tenant said she posted a second written request to repair her toilet to the Landlords' door on January 10, 2015, and when they did not repair her toilet she filed her application for dispute resolution on January 15, 2015.

The Tenant testified that the Landlord did not attend her rental unit until several days later and that they made her clean out the toilet before they would unplug it. She argued that the Landlord has never brought in a licensed plumber to deal with the issue of her toilet plugging and therefore, the problem has never been resolved. She argued that it is a health and safety issue and that she has no choice but to continue to use the toilet as she has to use something when it's time to go to the bathroom.

The Landlords testified that they have been resident managers at this rental unit since July 2014. The rental unit is located in an "old motel" that has four self-contained unit. The Landlord described the building as being of concrete construction that was 50+ years old. The building is hooked up to the municipal sewer and the owner told the Landlords that approximately two years ago the owner upgraded the plumbing from old cast iron sewage pipes to PVC pipes. The Landlords did not know if the upgrade included work to the interior sewage pipes or if the work was only done to the exterior pipes.

The Landlords acknowledged receiving the Tenant's request for repair on January 9, 2015, and confirmed that they told the Tenant it was her responsibility to unplug her toilet. They argued that they have attended this unit on a previous occasion in August 2014, to unplug the toilet at which time the Tenant told the Landlord it had plugged because her guest put needles down the toilet. They also had to attend on another occasions to unplug the kitchen sink.

The Landlords submitted that shortly after receiving the Tenant's written request on January 9, 2015, they attended the rental unit three times and each time the Tenant was not home. The Landlord state that when he returned the 4<sup>th</sup> time on January 12<sup>th</sup> or January 13<sup>th</sup>, 2015, the Tenant was home and let them in. When they entered the bathroom they saw that the toilet was full of feces and told the Tenant she had to empty the toilet before they would attempt to unplug it. They returned 10 minutes later, after the Tenant had emptied the toilet, and then used a plunger to unplug the toilet. The Landlord was able to unclog the toilet at that time and they were able to flush the toilet with no problems.

The Landlords testified that four days later, on January 17, 2015, they received another notice from the Tenant that her toilet was plugged again. So on January 21, 2015, the Landlord's posted a notice of entry effective January 22, 2015, the morning of this hearing. When the Landlord and his handyman entered on January 22, 2015, they told the Tenant that they would not deal with the situation unless she emptied the toilet again. When the Tenant refused to empty the toilet the Landlord refused to deal with the plugged toilet and left.

The Landlords confirmed that they have never had a licensed plumber attend this rental unit to investigate why it keeps plugging. They argued that they are of the opinion that the issued is the Tenant and/or her guests putting needles or other items down the toilet causing it to block. They argued that because of the other issues they have had to deal with this Tenant they felt it was her responsibly to deal with the clogged toilet.

In closing, the Tenant disputed the Landlords' submissions and stated that she has never told the Landlords that her guests have flushed needles down the toilet. She confirmed she has a very small wiener dog that is very old so she was surprised to hear that the Landlord would not enter her unit if she was not there.

Prior to the conclusion of the hearing, and after considering the above, I issued the Landlords the following Oral Order:

The Landlords are HEREBY ORDERED to bring in a licensed plumber as soon as possible and no later than close of business on January 23, 2015. The plumber is to unplug the Tenant's toilet, investigate the cause of the clogging issue, and to provide the Landlords and the Tenant with a copy of a written report detailing the work that was performed and the result of the plumber's investigation.

As soon as the Tenant disconnected the hearing the Landlord requested that the Tennant be ordered to clean out the toilet before the plumber attends. At that time I informed the Landlords that it was the Landlords' responsible to ensure the toilet was cleaned out and not the responsibility of the Tenant.

### Analysis

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence is that this rental unit, located in a concrete building, was more than 50 years old. The building underwent some major plumbing work in approximately 2012, when the old cast iron sewer pipes were replaced with PVC pipes. Since April 2014 the Tenant's toilet has become plugged on four occasions, (April 2014, August 2014, January 9, 2015, and January 21, 2015) and on each occasion the Landlord has refused to hire a licensed plumber to investigate the cause. Rather, the evidence proves the Landlord has delayed in attending to the clogged toilet. When the Landlord attends to clog the toilet, several days after they toilet became plugged, they demand the Tenant empty the excrement out of the toilet so the Landlord can use a hand plunger to unclog it.

In cases such as this, where there has been a history of an old toilet clogging, in an aging building that has had recent sewer pipes replaced, the Landlord is required to hire a licensed plumber to repair and investigate the problem to determine why the toilet keeps clogging. It is not enough to simply use a hand plunger to unclog the toilet as the cause of the problem may be deep inside the old toilet or may be down in the unground sewer drain. Such problems cannot be determined without the assistance of a professional plumber. Therefore, I find the Landlords breached section 32 of the *Act* by refusing to repair and maintain the Tenant's toilet and they were issued an oral order to repair the Tenant's toilet, as listed above.

Conclusion

The Tenant has been successful with her application.

The Landlords were issued an Oral Order during the hearing on January 22, 2015, to bring in a licensed plumber as soon as possible and no later than close of business on January 23, 2015. The plumber is to unplug the Tenant's toilet, investigate the cause of the clogging issue, and to provide the Landlords and the Tenant with a copy of a written report detailing the work that was performed and the result of the plumber's investigation. Further orders were issued to ensure that the Landlords cleaned out and/or prepared the toilet to enact the repairs.

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: January 23, 2015

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Residential Tenancy Branch

