



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MARSON ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, RP, OLC

### Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following remedies:

1. an order that the landlord provide emergency repairs;
2. an order that the landlord provide regular repairs; and,
3. an order that the landlord comply with the Act, regulations, or the tenancy agreement.

A dispute resolution hearing was convened and the landlords agents (referred to as the "landlord" herein), the tenant, and the tenant's advocate attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties did not raise any issues in respect of the service of the Notice of Dispute Resolution Proceeding.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

### Issues to be Decided

1. Is the tenant entitled to an order that the landlord provide emergency repairs?
2. Is the tenant entitled to an order that the landlord provide regular repairs?
3. Is the tenant entitled to an order that the landlord comply with the Act, regulations, or the tenancy agreement?

### Background and Evidence

The tenant testified that the tenancy commenced on May 1, 2018. Monthly rent is \$800.00. A copy of the tenancy agreement was submitted into evidence. Regarding her application for dispute resolution, the tenant testified that the rental unit has structural issues, and that the shower and bathtub leak. She can only shower if she puts up plastic to keep the sides of shower from getting wet. When it gets wet, it smells moldy. The bath and shower area are full of mold, and orange mold.

The tile work and caulking around the bathtub needs repairing. There is black mold under the sink and in the closet. On May 2, the tenant spoke with one of the landlord's agents, who was "very aggressive" toward her.

In addition to the mold issue, the rental unit has, or has had, a bedbug problem. The tenant suffered bites from the suspected bedbugs and submitted a photograph of the bites. She testified that when an inspection for bedbugs occurred, during the tenancy, the dog handler (and inspector) was unable to find any evidence of bedbugs. The inspector noted, however, "just because we can't find anything doesn't mean there's nothing there." The inspector further noted that, in the absence of any physical evidence of bedbugs, they cannot do a chemical treatment.

The tenant has found a bedbug nymph, bedbug markings, and testified that she caught what she thought was a live bedbug, though she may have killed it during capture. Several photographs of the rental unit and of bedbug evidence were submitted into evidence.

In closing, the tenant testified that the place is rundown, and that the landlord does not appear to want to do anything about it.

The landlord testified that the tenant viewed a rental unit on April 28 (but not the rental unit that the tenant ultimately moved into, because the tenant that was still residing in the rental unit at that time was a rather troublesome individual who refused to let the landlord show the suite to the prospective tenant). The tenant moved in on April 30, 2018, not on May 1, 2018, the landlord noted.

Regarding the photograph of the bites, the landlord suggested that we do not know who the individual is in the photograph, and that the bites were apparently the result of sunbathing on the lawn.

Regarding the mold, the landlord testified that the previous tenant (the troublesome one), was somewhat of a bike aficionado and stored motor oil in containers in various places around the rental unit. The "mold" is in fact motor oil stains, submitted the landlord. And, where it is not mold, it is instead dirt and food splatter.

Regarding the bedbugs and treatments, the landlord testified that the rental unit was treated prior to the tenant moving in. During the tenancy, there have been three inspections of the rental unit and one treatment. The most recent inspection occurred on October 11, 2018, (which is the fourth inspection this year) the inspector and the

inspection dog were unable to find any evidence of bedbugs. In addition, the inspector commented that if there was, in fact mold in the rental unit, that they would not bring their dog into the rental unit to carry out the inspection.

An inspection report dated September 10, 2018, notes that live bedbugs must be observed in order for a chemical treatment to occur. While there was a bedbug issue in the rental unit prior to the tenant's moving in, the issue was fixed. The next scheduled inspection is to occur on January 9, 2019.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 32(1) of the Act, which is titled "Landlord and tenant obligations to repair and maintain" states that a "landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

Section 33 of the Act defines "emergency repairs" to include such things as "major leaks in pipes or the roof [or] damaged or blocked water or sewer pipes or plumbing fixtures." This section of the Act does not include problems like bedbugs, however.

In this case, while the tenant submitted that the rental unit had bedbugs, the landlord's evidence brings that submission into question. The landlord took reasonable efforts to address the potential bedbug issue by having frequent inspections and one treatment. The tenant confirmed what the inspector said in terms of there being no physical evidence of bedbugs, which would be required to carry out a chemical treatment. The tenant or her advocate did not make any argument or submissions to establish that the landlord's actions (or inactions) either failed to comply with health, safety or housing standards required by law, or that the landlord's actions (or inactions) made the rental unit unsuitable for occupation by the tenant.

In regard to the mold issue, the parties dispute this. The tenant claims that there is mold and submitted photographs to support her claim. The landlord claims that it is not mold, but rather, motor oil, dirt and food splatter. I find that the photographs submitted could, in fact, support the position of both parties.

When two parties to a dispute provide equally reasonable 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. In this case, I find that the tenant has failed to provide sufficient, additional evidence that might establish that there is, indeed, mold in the rental unit. While I do not doubt the

tenant's testimony regarding a rather foul smell during a shower, such a smell does not necessarily indicate the presence of mold.

Regarding the emergency repairs as it relates to the bathroom, the tenant did not establish on a balance of probabilities that there were major leaks in pipes or that there was damaged or blocked water pipes or plumbing fixtures. The evidence submitted does not support this aspect of her claim.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim in seeking orders against the landlord under sections 32, 33, and 62 of the Act.

### Conclusion

I dismiss the tenant's application without leave to reapply.

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: November 2, 2018

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Residential Tenancy Branch