



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STRATATECH CONSULTING LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for emergency repairs for health and safety reasons.

The tenant, a support person for the tenant, an agent for the landlord NT ("agent") and the owner of the rental property ("owner") attended the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

The landlord's documentary evidence was filed late and only 3 days before the hearing. As a result of that documentary evidence being served late and not in accordance with the Rules of Procedure, the landlord's documentary evidence was excluded in full. The landlord confirmed they received all of the tenant's documentary evidence, with the exception of a photo. As a result, all of the tenant's documentary evidence except for photos was admitted in evidence. Only the evidence related to the matter before me has been described below.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

### Issue to be Decided

- Has the tenant provided sufficient evidence to support an order for emergency repairs under the *Act*?

### Background and Evidence

The tenant testified that a flood/backup of sewage entered the rental unit on July 5, 2019 and is seeking emergency repairs under the *Act* as a result. The agent testified that once notified, they immediately contacted a plumbing company and a restoration company. The agent stated that a document dated July 11, 2019, was provided describing the work required and that over a period of a few days, \$2,200.00 was spent to repair a sump pump in the basement that had failed. As of the date of the hearing, the tenant confirmed there is no sewage or water from the failed sump pump in the rental unit and that repairs to the sump pump were completed by the landlord.

The tenant did not dispute the timeframe submitted by the agent during the hearing.

The tenant stated that the flooring in the rental unit still needs to be repaired.

### Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

In the matter before me, the burden of proof is on the tenant to prove that emergency repairs are required, which are defined under sections 32 and 33 of the *Act*. Section 32 of the *Act* applies and states:

#### **Landlord and tenant obligations to repair and maintain**

**32** (1) 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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 33 of the *Act* applies and states:

**Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

Firstly, as the tenant did not dispute that the failed sump pump in the basement has been repaired by contractor hired by the landlord at the landlord's expense, and taking into account that the tenant affirmed that there is no sewage or water from the failed sump pump in the rental unit as of the date of the hearing, I find there is insufficient evidence before me to support an order for emergency repairs.

Furthermore, I find that the replacement of flooring is not an emergency repair under section 32 or 33 of the *Act*. Therefore, I dismiss the tenant's application due to insufficient evidence.

Conclusion

I dismiss the tenant's application in full, due to insufficient evidence.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 13, 2019

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Residential Tenancy Branch