



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ERP

### Introduction

On July 15, 2020, the Tenant applied for a Dispute Resolution proceeding seeking an Emergency Repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, with T.H. attending as his advocate. The Landlord attended the hearing as well. All parties provided a solemn affirmation.

T.H. advised that the Landlord was served with the Notice of Hearing and evidence package by placing it in the Landlord’s mailbox on July 16, 2020. The Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package. However, as the Tenant’s video evidence was not served to the Landlord, only the Tenant’s documentary evidence will be accepted and considered when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant by registered mail on August 6, 2020. T.H. advised that she received this evidence three days before the hearing and she questioned why this evidence was sent to her and not the Tenant. The Landlord stated that he sent this package to her address as that was the address she listed for service of documents on the Application. While I accept that this was a valid service address, Section 90 of the *Act* states that a document sent by mail is deemed received after five days. Furthermore, Rule 3.15 of the Rules of Procedure requires that this evidence be deemed received not less than seven days before the hearing. As this evidence was deemed received a day late, the Landlord’s evidence was excluded and not considered when rendering this Decision. The Landlord was allowed to speak to this evidence during the hearing, however.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair Order?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy originally started on May 1, 2014, that rent is established at \$550.00 per month, and that it is due on the first day of each month. A security deposit of \$270.00 was also paid.

T.H. advised that her and the Tenant have asked the Landlord multiple times to have the bathroom shower fixed. She stated that the shower head is duct taped and he cannot use the shower as it is filled with black mould. The excess moisture in the bathroom has caused the tiles to lift up. While she has no proof that the alleged mould is black mould or that it is hazardous to health, she stated that she “can’t imagine how it cannot be mould.”

She submitted that the Tenant has suffered from pneumonia, that he is in and out of the hospital, and that when he is in her car, the odour of mould is heavy on the Tenant. She stated that the tenant upstairs has smashed out many windows and moisture is entering the rental unit. As well, there was a leak from the upstairs tenant’s sink that has stained the ceiling, and she speculates that this has also contributed to the mould issue.

She stated that the mailboxes are not safe for mail delivery and that the front entrance is not secure as homeless people are sleeping in the lobby. She stated that the Tenant has put powder down because there have been cockroaches found in the freezer and there have been bed bugs in the rental unit in the past. She advised that the fridge leaks

every time it is plugged in and has caused damage to the floor. She stated that this fridge was supposed to be replaced but it has never happened.

She stated that the Tenant cannot cook on the stove as the outlet is hanging from the wall. As well, she advised that there was discolouration on the ceiling, and it had collapsed recently. She stated that these issues have been happening since the Tenant moved in and while there have been no written requests to have these problems addressed, she did have discussions with the Landlord multiple times about these issues. She stated that the Landlord attempted to address some issues a few days ago. T.H. referenced some pictures submitted as documentary evidence to support the Tenant's claims.

The Landlord advised that he took over managing the rental unit in 2016 and that he conducts maintenance on the property when he is informed that there is a problem. He stated that apart from the shower issue, he has not been informed of any other issues that the Tenant has. He submitted that the Tenant brought this to his attention in February 2020 and he has made many attempts to contact the Tenant to fix the problem, but he has received no response from the Tenant. He stated that the shower head is rusted but it is not leaking. It simply needs to be repainted or replaced. With respect to the condition of the shower, he stated that the Tenant is simply not cleaning the shower adequately.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 33 of the *Act* outlines the Landlord's and Tenant's duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

### **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.

(3) 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 at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;**
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.**

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find it important to note that the burden of proof lies on the party making the Application to substantiate the claims being made. When reviewing the testimony of the parties, the only consistent evidence is that the Landlord was notified of the shower issue. As there is no evidence that the Landlord was informed of the other issues, as many of the other issues may not fall under the requirements of what would be considered an emergency repair, and as there is little evidence provided to support that those other issues are in fact emergency repairs, the only issue that I will consider in this Application is with respect to the shower.

When reviewing the totality of the evidence presented by the Tenant, I acknowledge that there appears to be something wrong with the shower head; however, I do not find that this would fall under the definition of emergency repair. Regarding the condition of

the actual shower and whether or not there is some leak, I note that the pictures provided are not of good quality and it is hard to determine whether the shower is in a state of disrepair or whether it has simply not been cleaned by the Tenant.

Based on the limited evidence provided by the Tenant, I am not satisfied that if there is a leak in the shower, that it falls into the category of a “major leak” or is a “damaged or blocked water or sewer pipe or plumbing fixture” as defined under the emergency repair Section of the *Act*.

Furthermore, while I can reasonably infer that the Tenant’s reference to “black mould” is another reason for his request for an emergency repair, other than him simply stating that this may be present in the rental unit, I do not find that the Tenant has submitted sufficient or compelling evidence that there is this mould present, nor has he submitted any documentation that if this is present, how it is unsafe or a hazard pursuant to the emergency repair Section of the *Act*.

As the Tenant has provided insufficient evidence to corroborate that the “emergency repairs” sought constituted a repair that is urgent or necessary for the health or safety of anyone or for the preservation or use of the rental unit, I am satisfied that the granting of an emergency repair Order has not been substantiated. As such, I dismiss the Tenant’s Application in its entirety.

However, I caution both parties that Section 32 of the *Act* requires that the Landlord must provide and maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and it must be suitable for occupation by the Tenant. Furthermore, the Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental, and the Tenant is responsible for any damage caused by his negligence.

Should the Tenant believe that there are necessary repair issues that the Landlord is responsible for fixing, the Tenant may apply for a repair Order and for monetary compensation if the Landlord has not made any necessary repairs after a written request to do so.

As a note, the Landlord must abide by Section 29 of the *Act* when access to the rental unit is required to address any potential repairs that the Landlord would be responsible for correcting.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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 *Residential Tenancy Act*.

Dated: August 19, 2020

---

Residential Tenancy Branch