



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BentallGreenOak  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      ERP

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on February 28, 2022 seeking an order that the Landlord make repairs for health or safety reasons. This is an expedited hearing. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 12, 2022. In the conference call hearing I informed the parties that this dispute is an expedited process. I explained the hearing process and provided both parties the opportunity ask questions.

Both parties confirmed they received the prepared evidence of the other in advance of the hearing. On this basis, the hearing proceeded.

### Issue to be Decided

Is the Landlord obligated by s. 32 of the *Act* to make emergency repairs to the rental unit as requested by the tenant?

### Background and Evidence

In the hearing, the Tenant described their standing issue with the HVAC unit outside their bedroom window in the rental unit. They set out the impact to their mental and physical health, stating their need for medication in order to help with their inability to sleep because of the noise generated by the HVAC unit. They also stated this at some point affected their employment. They also stated their belief that the Landlord had not properly address the problem, despite offering another rental unit at a higher rent.

They referred to others' opinions on the level of sound within the rental unit. They also obtained information referencing local bylaws and acceptable sound levels. In particular, a representative from the municipality gave their opinion that the sound levels involved are above the threshold.

The Landlord presented that there was a prior hearing in this matter concerning the Tenant's request for repairs, in 2021. After that process, the Landlord installed a timer on the HVAC unit which means it does not operate from 4pm to 8am daily. Additionally, they have checked on the sound level, and the operation of the timer, on a regular basis. They reiterated that they have done whatever they can to monitor the issue. Their efforts include offering the Tenant an alternate unit, and screening the Tenant's request for another available unit due to its close proximity to the pool system that generates noise of its own.

### Analysis

The *Act* s. 33(2) sets out "emergency repairs" as a special category: those that are urgent, and necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- major leaks in pipes or the roof;
- damaged or blocked water or sewer pipes or plumbing fixtures;
- the primary heating system;
- damaged or defective locks that give access to a rental unit; or
- the electrical systems.

Based on what the Tenant presented here, I am not satisfied this issue is of an urgent nature in relation to the impact the sound level is allegedly having on their health. The Tenant did not provide specifics on care they received; I find the nurse practitioner's note (dated March 29, 2022) is not specific enough on the impact. Moreover, the note is dated within two weeks of the hearing date, and it shows neither a sustained pattern of health concerns, or a recent trigger event for a more serious or sudden onset of a legitimate health concern. The Tenant presented they now take medication in order to sleep; however, they could not name the medication and did not refer to it in their evidence and this detracts from their veracity on their point concerning a repair being necessary for their own health. In sum, what the Tenant presented for their health concern does not correlate or prompt an *urgent* kind of a repair.

I find the HVAC unit in question does not form part of the indicated purposes for repair set out above. It is not the primary heating system to the Tenant's own unit and there is no interruption to the Tenant's own heat in their unit which is what this category of repairs is reserved for.

Further, I find there are no repairs that can be made in this situation. I find the Landlord rectified the situation to the best of their ability by setting a timer on the unit. The Tenant did not sufficient provide evidence to show this did *not* occur in like fashion. Aside from this I find the Landlord has been diligent in following up on the Tenant's queries throughout and attempting to resolve the situation. In sum, there is no repair that can be made, aside from a major renovation to remove the HVAC unit and I am not satisfied of the need for that.

For these reasons, I dismiss the Tenant's claim in its entirety, without leave to reapply.

### Conclusion

I dismiss the Tenant's application for the Landlord to make emergency repairs, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 13, 2022

---

Residential Tenancy Branch