



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR

### Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for the cost of emergency repairs. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy is from February 1, 2011 to January 31, 2012. Thereafter, the tenancy agreement provides that tenancy will continue on a month-to-month basis. Monthly rent is \$1,425.00. A security deposit of \$712.50 was collected. A pet damage deposit was also collected but the parties were unable to confirm the exact amount.

During the morning of Sunday, September 18, 2011, the building manager contacted the tenant and advised him of water leaking through the ceiling of the unit downstairs. Within his own unit, the tenant found water on the kitchen floor; this appeared to have resulted when water from the dishwasher was unable to be fully drained because of a blockage in the sink line.

In response, the tenant made two calls to the landlord and left two voice mail messages. As the landlord was away, it was not until the following day, Monday, September 19, 2011 when he became aware of the tenant's messages. In the meantime, the tenant testified he was concerned that delay in remedying the problem might lead to serious water damage and, accordingly, he contacted a plumber. In a letter written by the plumber and submitted in evidence by the tenant, the plumber states in part:

On Sunday Sept. 18 from 1 pm until 2 pm I worked on your kitchen sink line that I found to be clogged with various debris. After several attempts with my industrial auger I was able to clear the sink line of all debris. I was unable to determine exact cause of clogage.

The tenant takes the position that as the plumber's involvement constitutes an "emergency repair," the landlord should be responsible for the related cost. On the other hand, the landlord takes the position that as there had been no problems with the drain during the 7 ½ month period of the tenancy leading up to September 18, 2011, it is most likely that the blockage was the result of debris built up from the tenant's use of the sink and garburator.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 33 of the Act addresses **Emergency repairs**, and provides in part, as follows:

33(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.

Further, however, section 33(6)(d) of the Act provides as follows:

33(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Having carefully considered the documentary evidence and testimony of the parties, I find the tenant's assessment that emergency repairs were required was reasonable under the circumstances. Further, however, I find on a balance of probabilities that the blockage was caused "primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." In the result, the tenant's application is hereby dismissed.

### Conclusion

The tenant's application is hereby dismissed.

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 17, 2012.

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Residential Tenancy Branch