



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ERP

### Introduction

This hearing dealt with the tenant's application pursuant to section 33 of the *Residential Tenancy Act* (the *Act*) for an order to the landlord to make emergency repairs to the rental unit for health or safety reasons.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Landlord RB (the landlord) confirmed that the landlords received a copy of the tenant's dispute resolution hearing package by registered mail on July 5, 2012. I am satisfied that the tenant served the landlords with a copy of this package in accordance with the *Act*.

### Issues(s) to be Decided

Should an order be issued against the landlord to conduct emergency repairs to the rental unit for health or safety reasons?

### Background and Evidence

Although the current landlord did not assume ownership of this rental property until early June 2012, the tenant testified that she has lived in this rental unit since June 2004. Current monthly rent is set at \$886.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$300.00 security deposit paid on or about June 1, 2004.

The tenant applied for an order requiring the landlords to remove what she maintained were upper hallway carpets that had an "unbearable stench of sewage and/or dog or cat urine and/or feces" in her rental unit. In her application for dispute resolution, she stated that she discovered this smell on June 13, 2012. This occurred following a June 12, 2012 incident where a member of the tenant's family residing in the rental unit left water running in the bathtub which overflowed soaking much of the rental unit in water. She admitted responsibility for the bathtub incident and confirmed that the overflow was clean water.

At the hearing, the tenant said that she had noticed this smell prior to the June 12, 2012 incident but this smell had become much more intense after that incident. She testified that she has never kept dogs or cats on the premises. She said that the smell has become worse after the landlords' initial June 13, 2012 steam cleaning of the carpets and the subsequent June 17, 2012 steam cleaning. She said that the carpet in question has not been replaced during her lengthy tenancy. Her witness testified that he came to her rental unit shortly after the flood occurred and used his Shop Vac to remove water. He said that the smell was very evident and that there was a distinct and offensive odour emanating from the carpet in question a week or two after the landlords' steam cleaning.

The landlord testified that the landlord has been as helpful as possible to the tenant in restoring her premises without incurring costs to her. Although she was responsible for the June 12, 2012 flood, the landlords have retained steam cleaning professionals twice to try to address her concerns. The landlord has sent maintenance staff to the premises a number of times to determine the extent of the tenant's concerns and to see if a remedy can be identified. He said that the tenant's lease required her to have tenant's insurance which would cover flooding incidents such as the one which precipitated the current problems. He gave undisputed testimony that the tenant told him that she does not have tenant's insurance. He noted that this rental building has always been a pet free building, although the tenant admitted to having caged birds and a guinea pig in the rental unit, which he and some of his staff suggested may be the cause of the odours identified by the tenant.

The landlord testified that a bathroom on the lower level of the rental unit was improperly installed which may have led to odour problems stemming from the toilet in that bathroom. He testified that corrective action was taken with respect to that bathroom. He said that the flooring was replaced in that bathroom after the problem was remedied. He referred to an invoice for flooring that he and his staff maintained was installed on or about June 28, 2012. As the tenant denied that any new flooring was installed in that bathroom, I asked the landlord to fax a copy of the invoice in question following the hearing. I subsequently received a copy of that invoice, although attach little weight to that evidence, as it is not specific as to the product or the location where this material was installed. I find little relevance to this evidence, other than the extent to which it confirms the landlords' efforts to resolve the tenant's concerns.

The landlord submitted a number of letters from individuals, mostly the landlord's maintenance staff, who had inspected the rental unit in an effort to identify the source and extent of the tenant's concerns about the carpet. These letters were not sworn affidavits. However, a number of the landlord's staff most actively involved in this

situation were available to give sworn testimony. Three of the landlord's staff with direct experience inspecting the premises gave sworn testimony. Their sworn testimony was for the most part consistent with the written evidence submitted by the landlords. These individuals testified that they have not noticed offensive smells or odours coming from the upstairs carpet on their most recent inspections of the rental unit. Some alluded to smells that may come from the closing of doors, the caged pets or the teenagers in the tenant's rental unit.

### Analysis

Section 33 of the *Act* defines "emergency repairs" in the following terms:

**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.*

Based on the written evidence and the sworn testimony of the parties and their witnesses, I find that the tenant has not established that the repair order she is seeking falls within the definition of emergency repairs set out in section 33(1) of the *Act*.

Separate from whether the replacement of the carpet in question meets the test of section 33(1) of the *Act*, I find that there is insufficient evidence that there are offensive odours emanating from the carpet. Two people gave sworn testimony that the odour emanating from the second floor carpet is offensive and a health risk. Three of the landlord's staff members who have entered the second floor area of the rental unit either deny that there are offensive odours in that area or attribute any slight odours

present to sources that are not the responsibility of the landlords. Two of these staff members gave detailed sworn testimony as to the extensive steps they have taken to pull up test portions of the carpet in question and drill small holes to identify any potential problems that can be resolved. Recognizing the subjective nature of smells and odours and the long-term nature of this tenancy, I find the detailed testimony of the landlord's staff members and the landlord's evidence more compelling than the description provided by the tenant and her witness.

Even if I am wrong in my determination regarding the odours emanating from the second floor carpeting, I find it more likely than not that the timing of the smells identified by the tenant coincided with the flooding that occurred on June 12, 2012. As the tenant admitted full responsibility for the flood that occurred that caused damage to her rental unit, I find that the actions of the tenant or those living in her rental unit are responsible for any odours that the residents of the tenant's rental unit find offensive.

Although I have given the tenant's evidence, including that of her witness careful consideration, I am not satisfied on a balance of probabilities that the tenant has established a need for the issuance of an order requiring the landlords to conduct repairs to the carpet or replace that carpet. The onus of demonstrating entitlement to the issuance of an order rests with the party seeking that order. I find that the tenant has not met that onus. As such, I dismiss the tenant's application for an order requiring the landlord to undertake emergency repairs.

### 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 *Residential Tenancy Act*.

Dated: July 20, 2012

---

Residential Tenancy Branch