



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, RP

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make emergency repairs and repairs.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence, and make submissions to me.

At the outset of the hearing, each party confirmed that they had not submitted documentary evidence.

I have reviewed all evidence before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make emergency repairs and repairs?

### Background and Evidence

The undisputed evidence is that this tenancy began on September 1, 2011, monthly rent is \$900.00 and the tenant paid a security deposit of \$450.00.

In support of her allegation that emergency repairs are needed, the tenant said that beavers have eaten through a willow tree in the backyard of the rental premises, compromising the stability of the tree. The tenant said that there is a branch from the tree overhanging her son's bedroom and she will not allow him to sleep there as the tree is in imminent danger of falling.

The tenant said that the landlord has been promising to have someone cut down the tree, but has not done so.

As to the tenant's request for repairs, she submitted that three windows in the rental unit are either broken or missing, and have been since moving in, causing cold air drafts to go throughout the home and increasing her hydro bills. The tenant said the landlord has promised to fix the windows, but has not done so.

Additionally, the tenant said her patio door has not worked since moving in and that this is her secondary emergency escape. The tenant submitted that the landlord has promised to fix the door, but has not done so.

In response, the landlord agreed that the tree was compromised, but not in imminent danger of falling down. The landlord also said that she did contact an arborist to attend to the tree for remediation, but that his schedule prevented him from so doing as of the day of the hearing.

In response to the issue of the windows, the landlord acknowledged that the windows have not been fixed, but said that she was unaware this was a continuing concern for the tenant as plastic was covering the window, as is common in that area, and as she has not heard further from the tenant.

As to the issue of the patio door, the landlord acknowledged that it did not work properly and should have fixed it sooner, but did not. The landlord denied that there were no other secondary emergency exits, as each bedroom had a window for egress.

### Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

Section 32 of the *Act* requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 of the *Act* requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made for the purpose of repairing the following: 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 the rental unit or the electrical system.

Residential Tenancy Branch Policy Guideline 1 states that at the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair and that the landlord is generally responsible for major projects, such as tree cutting.

In the circumstances before me, I do not find that the issue of the tree removal is an emergency repair as defined in the Act, but I do find that it is a necessary repair under the Act. I additionally find that the issues regarding the windows and the patio doors are also necessary repairs, all of which the landlord is obligated to complete.

I find the landlord has not taken sufficient action necessary to remedy the compromised tree, the broken or missing windows and the patio door, as is her requirement under the Act.

I therefore order the landlord to properly repair or replace the windows in question in the rental unit, to repair the patio door and to make the arborist's recommended remediation to the willow tree before January 15, 2013.

I find that should the landlord fail to fully repair or replace the windows and patio door and remediate the tree in a manner recommended by the arborist by January 15, 2013, the tenant is at liberty to file another application for dispute resolution and seek an order reducing her monthly rent until such repair, replacement or remediation, in their entirety, has been completed.

### Conclusion

The tenant's application has been granted and the landlord is ordered to repair or replace the windows in the rental unit, to repair the patio door and to remediate the willow tree in accordance with the arborist's recommendation by January 15, 2013.

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* and is being mailed to both the applicant and the respondent.

Dated: December 14, 2012.

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Residential Tenancy Branch