



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Transpacific Realty Advisors  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, RP, RR, FF

### Introduction

This hearing dealt with an application by the tenant seeking an order to have emergency repairs conducted, an order to make repairs to the unit, and an order to allow the tenant to reduce their rent for repairs, services or facilities agreed upon but not provided. Both parties participated in the teleconference hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act, the regulations or the tenancy agreement?

### Background and Evidence

The tenancy began on or about April 1, 2006. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$500.00.

The tenant gave the following testimony:

The tenant is the sole applicant in this matter and is seeking an order to allow him to install trillium flooring that he has purchased at the landlords expense, the landlord to replace the existing stick tile and carpet flooring with hardwood and \$550.00 X 9 months= \$4950.00 for having to endure this situation. The tenant stated that on August 9, 2012 the tenant came home to his apartment to see “a lot of activity going on in

there". The tenant observed that the toilet had "flooded". The resident manager along with others were there trying to "fix the flood". The tenant stated the floor has now buckled up and must be replaced. The tenant had a restoration come in and assess the unit. The tenant stated that mould had developed in the affected areas of the floor shortly thereafter. The tenant hired a restoration company to assess the damage. The restoration company attended on October 30, 2012. The company indicated a scope of work that included but not limited to removing the parquet flooring, subfloor and affected carpet. The tenant stated that this was an ongoing problem that required three different visits by three different plumbers to finally get this toilet fixed. The tenant stated he feels that the landlords are "taking aim at me because at arbitration I win every single time, I single handed won the acquittals too". The tenant stated that this whole matter got to this point due to not having a competent plumber fix the toilet properly the first time. The tenant stated he just wants his place "to be taken care of by the landlord in a reasonable manner".

The landlords' agent gave the following testimony:

On August 9, 2012 the resident manager did attend to the subject unit to assess a water leak. The tenant was home at the time. The resident manager had a plumber attend to repair the leaking toilet tank. The agent stated that the bolts that connect the tank to the seat had come loose, "probably due to misuse and that the tenant is a heavy set man". The agent stated the water leak was cleaned up and that no damage was done to either the bathroom flooring or the parquet flooring at the entrance of the bathroom. The landlords had a restoration company attend the unit to assess and inspect on February 5, 2013. The company found no moisture readings in the areas of worn flooring and no signs of mould growth. The landlords stated that the tenant has been observed to be careless and reckless in the unit. The landlords stated the unit was given to the tenant in very good condition and that any degradation to the suite is due to the tenants misuse and carelessness. The landlords stated that the tenant himself is pulling up the flooring and is "staging" the damage in attempts to have his unit renovated and redecorated.

The landlord stated that the tenant has made many claims and allegations in the past that had no weight or basis to them.

### Analysis

The relationship between these two parties is a highly contentious one. These parties have been involved in numerous dispute resolution hearings. As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenant must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. As the tenant is the sole applicant in this matter I will address the tenants' claims and my findings as follows.

The tenant is seeking an order for the landlord to carry out emergency repairs to the floor in his suite. Section 33 of the Act addresses emergency type repairs and its definitions.

### **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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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.

(4) A landlord may take over completion of an emergency repair at any time.

(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.

(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:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (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.

(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.

The tenant has not established that the rental unit required any repairs within the category of “emergency repairs” as defined in ss. (1), above. Based on the insufficient nature of the tenants’ evidence I dismiss this portion of the tenants’ application.

The tenant is seeking an order to have repairs done to the flooring in the unit. The tenant applied to have the same items repaired under emergency repairs above.

Section 32 outlines repairs and it’s definitions 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The tenant has provided some evidence of worn carpet however the landlord disputed that claim and stated it was only in a small corner of the floor. The landlords’ agent stated that they have attended on numerous occasions and find the unit to be in a generally good condition. The agents stated that they have concerns that the tenant smokes in the unit and wear boots all the time. The agents felt the tenant was lacking the care and attention to the facilities and that the areas that appear worn are due to the tenants neglect. The tenant stated that he had many witnesses that could support his

position in this matter; however none of those witnesses' participated in the teleconference. The tenant stated that "if I had the time to organize this, I have five years worth of evidence to show you". During the hearing the tenant often made editorial comments at how the agents "eyesight doesn't necessarily reflect others reality" and that the agents have a "hidden agenda". The tenant was on the verge of screaming at times during the hearing. On two separate occasions I cautioned the tenant to refrain from making comments that were not in relation to the hearing however his voice was at such a level he did not hear me. The tenant continually referred to issues that had occurred in the past and previous hearings and their outcome. I asked the tenant on numerous occasions to focus on his application and present the evidence in regards to the items applied for. The tenant offered a version of the events and then when I sought clarification or asked him to expand on an issue, the version changed. I did not find the tenant reliable and accordingly; I dismiss this portion of his application.

The tenant is seeking a rent reduction for having lost the use of the majority of his floor over 9 months. The tenant was seeking half a months' (\$550.00) rent X 9 months = \$4950.00. As I have stated in the previous claim, the tenant was unclear in his testimony. He provided a written time line for this hearing but his testimony was in direct odds with it. The tenant gave disjointed and confusing testimony as to when he felt he had lost use of his unit and the extent of that loss. The tenant did not provide a clear and concise account of the events. Based on the unreliable and unclear testimony and contradiction to his own documentation, I dismiss this portion of the tenant's application.

The tenant has not satisfied me on the burden of proof based on the balance of probabilities, and I therefore dismiss the tenant's application in its entirety without leave to reapply.

The tenant has not been successful in his application and is not entitled to the recovery of the filing fee.

Conclusion

The tenant's application is dismissed in its entirety.

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: April 23, 2013

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Residential Tenancy Branch

