



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation for the cost of emergency repairs and to recover the filing fee.

The hearing was conducted by teleconference on May 10, 2017. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on March 8, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

The Tenant testified that according to the Canada Post tracking feature, he was informed that the Landlord retrieved the package on March 15, 2017; accordingly, I find the Landlord was duly served as of March 15, 2017 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or

argument are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation for the cost of emergency repairs?
2. Should the Tenant recover the filing fee?

### Background and Evidence

The Tenant testified that the tenancy began June 1, 2016. He confirmed that he continues to reside in the rental unit. A copy of the residential tenancy agreement was also provided in evidence and which confirmed the Tenant pays rent in the amount of \$980.00.

In the within action the Tenant sought the sum of \$404.25 for the cost to have the drains cleared at the rental unit. In support the Tenant provided a copy of a receipt dated December 27, 2016.

Also introduced in evidence were emails and texts between the Tenant and the Landlord wherein the Tenant asked the Landlord to attend to the clogged sink. In response the Landlord informed the Tenants to contact a plumber.

### Analysis

After consideration of the undisputed testimony and evidence before me and on a balance of probabilities I find as follows.

Section 33 of the Act provides as follows:

#### **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.

Based on the undisputed testimony of the Tenant, the evidence filed, and pursuant to sections 33 and 67 of the *Act*, I Order that the Landlord's reimburse the Tenant the cost to unclog the kitchen drain.

I find that the clogged drain is an emergency repair as defined by section 33. I accept the Tenant's evidence that the repair was urgent, necessary for the use of the kitchen sink and related to blocked plumbing. I also find the Tenant brought this repair to the Landlord's attention and the Landlord directed the Tenant to call a plumber.

Although the Landlord failed to attend the hearing to dispute the Tenant's claims, in the text and email communication between the parties the Landlord suggests this repair was not an emergency repair as he writes "a single clogged drain is not considered an emergency repair as you have access to other drains on the premises". I do not agree. A kitchen sink is necessary for preparing meals and it is not reasonable or hygienic for the Tenant to use the bathroom facilities for this purpose. As well, I accept the Tenant's evidence that the kitchen sink and dishwasher share a common drain (photographic evidence confirms this as well) such that he was unable to use the dishwasher as well.

### Conclusion

I therefore find the Tenant is entitled to the sum of \$504.25 representing the cost of the emergency repairs and recovery of the filing fee.

Pursuant to section 65(1) and 72, I authorize the Tenant to reduce his next month's rent by \$504.25 such that he will pay the sum of \$475.75 for rent.

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: May 10, 2017

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Residential Tenancy Branch