



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, FF, MNDC

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein Tenants requested an Order that the Landlord make emergency repairs to the rental unit, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Regulation*, or the tenancy agreement; and recovery of the filing fee.

The hearing was conducted by teleconference on January 18, 2018 at 9:00 a.m. Only the Tenants called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant, J.D., testified that they served the Landlord with the Notice of Hearing and the Application on January 6, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. J.D. stated that he was informed by the Canada Post tracking service that the hearing package was signed for by the Landlord on January 10, 2018. Accordingly, I find the Landlord was duly served as of January 10, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord/Tenant's submissions and or arguments 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. Are the Tenants entitled to an Order that the Landlord make emergency repairs to the rental unit?
2. Are the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Regulation*, or the tenancy agreement?
3. Should the Tenants recover the filing fee?

### Background and Evidence

This tenancy has been ongoing for over 23 years, having begun in April of 1994.

J.D. stated that for the most part, the Tenants have not asked the Landlord to make repairs to the rental unit as their experience has been that when they have asked the Landlord in the past he has been very resistant to spending money on the rental property, at times threatened to raise the rent, and even accused the Tenants of intentionally damaging the property (which they adamantly deny). J.D. stated that as a consequence, they have maintained the property and taken care of minor repairs and even replacing broken appliances when the Landlord refused to do so (they confirmed they intend to take those purchase items with them when they move out.) J.D. stated that the only issues that the Landlord has addressed in the 23 year tenancy is when the back stairs fell off the house, the hot water tank needed replacing and the water pump needed replacing.

J.D. stated that despite their efforts to minimize any requests to the Landlord they had no choice but to make this application due to the need for emergency repairs to the water main to the house as well as the leaking roof.

J.D. testified that on November 28, 2017 at approximately 6:00 p.m. they returned home to discover that the front entrance was being flooded with water. He called the Landlord in a panic as they couldn't stop the water from coming in. When the Tenant spoke to the Landlord to inform him of what was going on, the Landlord said: "what do you want me to do about it, raise your rent?" J.D. stated that the Landlord also accused the Tenants of not looking after the property and breaking the pipe deliberately (notably, the water main is four feet underground).

The Tenants tried to deal with the water issue as much as they could. J.D. stated that he first shut off the main shut off valve in the house but that didn't stop the water from coming in. The Tenants used dog blankets to stop the water, used a snow shovel to divert it outside and also used a rug cleaner to suck up the water and otherwise do all they could to keep the water out of the rental unit.

J.D. then realized that the water was coming in from the street. He called the City and they informed him that it was the Landlord who needed to make the request. He then called the Landlord again and asked him to call the city at which time the Landlord did and at approximately 10:00 p.m. the water was shut off.

The next day a plumbing company came to the property and determined it was the main water line. The Tenant took time off to meet them and the Landlord did not attend. J.D. was informed that the plumbing company would call the Landlord and inform him of what needed to be done.

The insurance company also attended the same day and the Tenant met with them. They asked the Tenants what they did to contain the water and commended them on preventing further damage.

Following this, the Tenants followed up with the plumbing company who confirmed they had spoken to the Landlord about what needed to be done.

Because the water was shut off and there was no water at the rental unit, the Tenants then ran a garden hose from the neighbours' house to the rental unit so they would have basic water supply. The Tenants then waited to hear when the work would be done.

J.D. stated that on December 6, 2017 the City put a notice on the door informing the Landlord that the water main had to be fixed by December 20, 2017. The Tenant stated that he contacted the City to make sure the December notice had been sent to the Landlord. They confirmed it had been sent, but suggested he take a photo and send it to the Landlord. The Tenant did as instructed.

J.D. testified that December 20, 2017 came and went and the Landlord hadn't fixed the problem.

The Tenant then applied for Dispute Resolution on December 20, 2017.

The Tenant stated that on December 22, 2017 the garden hose froze such that they did not have any water in the rental unit to even flush the toilets. At that time, he drove to another city, to stay with family as he could not live in the rental unit. In the within hearing the Tenants sought compensation for \$155.00 for fuel costs for the Tenant to drive to his family members on December 22.

The Tenant confirmed that only after the Landlord was served with his Application for Dispute Resolution was the plumbing fixed. He confirmed that the plumbing was fixed as of January 16, 2018.

The Tenant stated that although the plumbing has now been fixed, the Landlord continues to avoid repairing the roof. He stated that water issues have been a problem for approximately 20 years as the design of the upper floor causes the accumulation of water. The Tenant confirmed that he has spoken to the Landlord about this on numerous occasions, but that in February of 2017 it became clear that it was a more serious problem. He stated that the roof leaks on the second floor; specifically in the kitchen, back bedroom and back bathroom. The Tenant stated that when he spoke to the Landlord about this in February of 2017 the Landlord asked for a \$500.00 rent increase.

The Landlord put the property up for sale at which time a realtor informed the Landlord that this needed to be addressed as soon as possible.

The Tenant stated that in addition to his numerous verbal requests for the roof to be repaired, he made a written request on December 20, 2017 (a copy of which was provided in evidence).

The Tenant stated the current situation is urgent as the back bedroom is not useable at all as when it rains it pours water into the bedroom and is all mouldy. His roommate, I.U. (the other named Tenant) had to move from this room to the spare room. The Tenant stated that the water leaking in the kitchen and bathroom seem to have diverted to the back bedroom, perhaps as the damage to the ceiling has created a low spot.

The Tenants seek an Order that the Landlord repair the roof immediately.

In addition to the \$155.00 in fuel costs, the Tenant also sought \$700.00 for the replacement cost of a mattress which was damaged by the leaking roof in the amount of \$700.00 as well as recovery of the filing fee of \$100.00 for a total monetary Order in the amount of \$955.00.

## Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

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

Section 32 of the *Act* mandates the Landlord's obligations in respect of repairs to the rental unit 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.

...

- (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 *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
  - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

The above mandates a Landlord to make repairs when a request for repairs is to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards.

I find the Landlord has failed to make repairs as required and in doing so, has failed to honour his obligations pursuant to the *Act* and the *Regulations*. I therefore find the Tenants are entitled to an Order that the Landlord make repairs as well as compensate them for their losses claimed on their Application.

It is clear the Tenants have done what they can to repair and maintain the rental unit despite the fact the majority of what they have done over the years is in fact the Landlord's responsibility. The Landlord has benefited tremendously as a result of their willingness to take steps to preserve and maintain his property. While the testimony of the Tenants was that the repair to the water main line was completed shortly before the hearing, it is most unfortunate the Landlord did not address this immediately and appears to have only done so in response to the Tenant's Application.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

It is entirely unreasonable to expect the Tenants to seek out a water source from the neighbours as they were forced to do. I therefore find it reasonable that when the garden hose froze, the Tenant, J.D., left the rental unit to stay with family, as he could have gone to a hotel and incurred the cost of alternate accommodation, which ultimately would have been recoverable from the Landlord. In staying with family, he fulfilled his duty pursuant to section 7 to minimize his loss; I therefore find that he is entitled to the **\$155.00** in claimed fuel costs.

The Tenants are at liberty to apply for further monetary compensation pursuant to sections 65(1) and 67 for loss of quiet enjoyment and devaluation of the tenancy as a

result of the Landlord's unwillingness to address the water main issues in a timely manner.

I accept the Tenants' undisputed evidence that the roof has leaked for 20 years, and that it has gotten progressively worse. I further accept that the current situation is so problematic that a mattress has been damaged by the leak and I award the Tenants the **\$700.00** claimed.

In furtherance of the above, I also make the following Orders pursuant to sections 32, 33, 67 and 72 of the *Act*:

1. The Tenants are provided a Monetary Order in the amount of **\$955.00** representing the cost of replacing the mattress, recovery of fuel costs, and recovery of the filing fee. The Order must be served on the Landlord and may be filed and enforce in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.
2. Should the Landlord not pay the \$955.00 by March 31, 2018, the Tenants shall be permitted to reduce their April 2018 rent by \$955.00.
3. By no later than January 31, 2018 the Landlord shall:
  - a. hire the services of a professional roofer to repair the roof and address the water issues in the rental unit.
4. Should the Landlord not repair the roof as required,
  - a. the Tenants may, pursuant to section 65(1) of the *Act*, reduce their rent by 40%, namely \$830.00 until the repairs are completed, such rent reduction to commence February 1, 2018 (This 40% reduction is in addition to the \$955.00 reduction contemplated by paragraphs 1 and 2 above as applicable);
  - b. the Tenants may hire services of a professional roofer to assess and report on the roof and provide recommendations regarding the roof and the water issues in the rental unit; and,
  - c. the Tenants are at liberty to make further application for repair orders related to the roof repair and water issues, as well as further monetary

compensation pursuant to sections 65(1) and 67 for loss of quiet enjoyment and devaluation of the tenancy as a result of the Landlord's unwillingness to address the water leaking roof in a timely manner.

5. As the Tenants have provided post-dated cheques for their rent payments until March 31, 2018, the above calculations may be considered a credit and thereby affect the amount of rent payments payable as of April 2018.

### Conclusion

The Tenants are entitled to the repair orders and monetary compensation as claimed. Should the Landlord not make repairs as ordered in this my Decision the Tenants may further reduce their rent in accordance with this my Decision and make application for further monetary compensation.

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 19, 2018

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Residential Tenancy Branch