



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

ERP FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for an order that the landlords make emergency repairs to the rental unit pursuant to section 33 and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlords confirmed receipt of the tenant's Application for Dispute Resolution. Both parties confirmed receipt of the other party's documentary evidence.

### Issue(s) to be Decided

Is the tenant entitled to an order that the landlords make emergency repairs to the rental unit? Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on November 26, 2017 as a fixed term scheduled to continue until May 31, 2019. A portion of the residential tenancy agreement was submitted as evidence for this hearing. The parties agreed that the rental amount of \$1900.00 was paid by the tenant with a series of post-dated cheques already provided to the landlords. According to the tenant's testimony, there was no set date that those cheques were cashed. The landlords continue to hold a \$950.00 security deposit paid by the tenant at the outset and signing of the tenancy agreement.

Because of the nature of the tenant's application (for emergency repairs), I will provide an outline of the submissions by both parties and analysis with respect to emergency repairs under the Act. While both parties provided documentary submissions, testimony and arguments with respect to the tenant's application, not all of those submissions will be reproduced here. I will include relevant information below. I have not included the details of the letter from the tenant's lawyer.

The tenant applied for emergency repairs and to recover a monetary amount for emergency repairs. In the tenant's application, he wrote that he needs emergency repairs done for health and safety reasons and that he has contacted the landlords but no repairs have been done. He submitted documentary evidence with his application as follows,

- the first page only of the move-in condition inspection report;
- letter from lawyer sent to landlords to request a variety of repairs;
- gas bills for the residential premises;
- invoices and receipts for repairs done by the tenant;
- the tenant's own notes of events related to repairs at the rental unit;
- email correspondence with the landlords;

Most items listed on the one page of the condition inspection report provided by the tenant are marked good or fair condition. However, the report indicates that the stovetop and the fireplace is damaged (the report reads, "hearth needs work").

The gas bills submitted by the tenant indicate that a security deposit remains unpaid and that, as of January 31, 2018, there is an outstanding balance of \$277.09. The tenant testified that he believes the gas bills are too high because of a defect of the heating in the rental unit. He submitted an invoice from electrical company for \$158.81 for an electrician to come to the rental unit and test the gas pressure, investigate the tenant's complaint that the rental unit was extremely cold. The invoice included some analysis from the electrician and read,

- "ducting is not really that great, most joints are taped together and could come apart..needs duct... Homeowner would replace ... filter. Was basically heating outside... Furnace is working ok.

The tenant submitted a second invoice from the electrical company, dated the following day, and for \$251.72. The invoice indicated that the cost was for materials and labour to change the old thermostat, install a new thermostat and to put sheet metal patch over the return bathroom duct. The tenant submitted a hardware store receipt for \$10.16 – the cost of the filter.

The tenant testified that the landlords has responded to only a few of his repair requests including a broken toilet. The tenant submitted email correspondence between himself and the landlords from prior to the start of the tenancy (November 2017) through February 2018. The tenant's emails provide extensive lists of repair requests. The landlords testified that they have responded to the tenants' inquiries and undertaken a variety of repairs including but not limited to a shower door. The landlords submitted that the emails show their response to any inquiries by the tenant. With respect to the shower door, the landlords testified that the she sent a repair person to investigate the tenant's complaint that the shower door does not close. She testified that the repair person indicated that the door would have to be replaced to address the problem of the sticky door but that it is not letting water out. The landlords decided not to replace the door at this time.

The landlords testified that she addressed the tenant's complaints about the gas bill by arranging that the bill be paid in equal monthly payments. She testified that her brother, who is licensed to work on furnaces and do other repair work could have investigated the problem without labour costs. She testified that the tenant gave her no opportunity to investigate the furnace/heat issue. As well, the landlords emphasized that her brother would have been her choice for repairs as she trusts him. The landlords testified that the tenant refused to allow her brother into the unit for other repairs and simply did not ask before calling the electric company for this repair. The tenant testified that he had told the landlords that he wanted a professional to do the work.

The landlords described the rental property as 1912 heritage house with two levels and a basement. She submitted that, because the home is old, the walls are not insulated as well as some new homes and the older design and materials affect that other items. The landlords submitted that the tenant was aware of the condition of the house at move-in but now, he takes on repairs himself and makes unreasonable requests. For example, the tenant requests that the landlords put a laundry sink in the laundry room. He testified that he believes there is a hook-up for a laundry sink. The landlords provided undisputed testimony that there has never been a laundry sink in the laundry room during the course of the tenancy. The tenant acknowledged that there had never been a laundry sink in the laundry room but that he would like one so that he doesn't have to clean his mop in the kitchen sink.

The landlords testified that, when she purchased the house in October 2017, the house underwent a thorough inspection and, because of the age of the home and the area, the landlords had arranged for a pest control treatment and an inspection of the furnace as well as other facets of the home. The landlords testified that she has done her best to respond to all inquiries by the tenant. She testified that, on more than one occasion, the tenant has made changes to the home or taken on repairs on his own. She used the tenant's electric company invoices as an example. She provided undisputed testimony that the tenant did not seek her permission or authorization to have someone come in, the tenant did not give her an opportunity to call someone of her choosing and work was done in the home without her authorization.

The landlords testified that the tenant just demands that certain work be done at the rental unit and that, if the landlords do not agree, or do not do the work immediately, he just goes ahead and does it himself. She submitted that none of the repairs described by the tenant are emergency repairs and therefore are at the landlords' discretion. She testified that the tenant has been cautioned not to make any further changes to the rental unit without the landlords' permission. The landlords testified that there has been more than one occasion that the tenant has denied repair people access to the rental unit. The landlords testified that, every cost the tenant has described as repairs done at his cost were not pre-authorized by the landlords.

### Analysis

The tenant has applied for the landlords to make emergency repairs. The tenant also claimed, in his application and in an amendment form submitted for this hearing, that he should be compensated by the landlords. However, the tenant has not formally applied for a monetary award. Therefore, I am unable to award any monetary amount, beyond his \$100.00 filing fee to the tenant.

I accept the submissions of the landlords that the repairs sought by the tenant are not emergency repairs. Section 32 and 33 of the *Act* below address the obligations of a landlords with respect to repairs,

### **Landlord and tenant obligations to repair and maintain**

**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.

### **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 testimony of the tenant as well as the materials he submitted as evidence for this hearing, including a letter from a lawyer to the landlords outlining the required repairs to the rental unit and email correspondence between the landlord and the tenant, I find that the tenant's request for repairs are not emergency repairs. Some of the tenant's requests of the landlords cannot even be categorized as "repairs" and are more accurately described as requests for improvements to the rental unit. For example, the tenant requested at this hearing, in writing and in conversation with the landlords, to have a sink added to the laundry room. The sink was not an amenity available at the beginning of the tenancy or at any point during the tenancy. I find that a sink is not something that is an essential component of every laundry room, as useful as it might be for cleaning a mop. I find that all of the repairs done or requested by the tenant were not "urgent". The tenant has provided insufficient evidence to show that any of the repairs he paid for or requested of the landlords are emergency repairs as described in section 33 of the Act with the exception of one repair.

The repair of the heat thermostat and duct work in the rental unit fall under emergency repairs at section 33(1)(c)(iii) – repairs to the primary heating system. I find that the tenant has not proved, on a balance of probabilities that:

- The repair was urgent; and
- The repair to the thermostat was necessary for the health or safety of anyone or for the preservation or use of residential property,

The tenant did not provide sufficient evidence to show that the tenant could not wait for the landlords to respond to a request for emergency repairs. I find that the email evidence submitted for this hearing shows that the landlords generally responded within hours or one day to any request by the tenant. In fact, the landlords were proactive in that if they had heard that the tenant was thinking about a repair from a third party, they would contact him about the repair.

Despite repeated requests in various forms including emails, the tenant did not seek the landlords' permission to repair the thermostat or to add ductwork. He did not contact the landlords twice nor did he give them a period of time to respond. For these reasons, I find that he is not entitled to recover the expense of approximately 421.91 to repair the thermostat and add a duct patch and purchase a filter, all done without the permission of the landlords.

I accept the largely undisputed testimony of the landlords that the tenant would phone or email, demand and then do repairs or arrange repairs on his own. I also accept that the tenant often did not request the repairs from the landlords beforehand or request permission to make changes to the rental unit. I find that the tenant is not entitled to an order for repairs with respect to any of his list of requests. I order that the tenant provide all further repair requests in writing.

I note that the landlords agreed, at this hearing, that they would further review the tenant's list of requests and respond, in writing to all of those requests, if they have not already done so.

Based on all of the evidence before me, I dismiss the tenant's application in its entirety,

As the tenant was not entirely successful in his application, I find that the tenant is not entitled to recover the cost of his filing fee.

Conclusion

I dismiss the tenant's application 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 19, 2018

---

Residential Tenancy Branch