



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OLC LRE FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

### Issues

Should an order be issued requiring the landlord to comply with the Act, regulation or tenancy agreement?

Should an order be issued restricting the landlord's right to enter the rental unit?

Are the tenants entitled to recover the filing fee?

### Background and Evidence

The tenancy began June 1, 2018 and the current monthly rent is \$6000.00 payable on the 1<sup>st</sup> day of each month.

The main issue in dispute was a plumbing bill for a clogged kitchen sink in the amount of \$229.95. The tenants requested the landlord do the repair but the landlord refused stating it was the tenants' responsibility. The tenants ended up calling a plumber.

Neither party has paid the plumbing invoice. The tenants were billed by the contractor but the tenants sent the bill to the landlord who has refused to pay it.

The tenants are also requesting the landlord comply with the Act or a restriction on the landlord's right to enter after an incident involving the landlord attending the property and taking picture without the tenants consent.

The landlord testified that the tenants should be responsible for the clogged drain repair as it was functioning properly at the beginning of the tenancy. The landlord argues that the clog was likely caused by the tenants washing their dog in the sink as hair was found in the sink.

The landlord submits that she only attended to the property as a result of an emergency. The tenants had reported a break-in and a broken window. The landlord did not enter the rental unit and was only taking pictures of the broken window from the outside.

### Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Section 33 of the Act describes "emergency repairs" as those 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 purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

Subsection 33(3) of the Act sets out that a tenant may make emergency repairs where emergency repairs are needed, the tenant has made at least two attempts by phone to contact the landlord, and the tenant gave the landlord a reasonable amount of time to make the repairs.

If a tenant has attempted unsuccessfully to have the landlord complete emergency repairs, subsection 33(5) of the Act requires a landlord to reimburse a tenant for emergency repairs if, the tenant claims reimbursement from the landlord and provides the landlord a written account of the emergency repairs accompanied by receipts for the

amounts claimed. If the landlord does not reimburse the tenant, then the tenant may deduct the amount from rent or otherwise recover the amount.

Pursuant to subsection 33(6) of the Act, the landlord is not responsible for the cost of emergency repairs where:

- (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.

I find the landlord has submitted insufficient evidence that the clogged drain was caused by the actions or neglect of the tenants. The obligation was on the landlord to perform the required repairs which in the case of a clogged drain fall under the definition of a emergency repair under the Act. I find the tenants took the appropriate steps to contact the landlord and provided the landlord reasonable opportunity to perform the repairs but the landlord refused. The tenants were within their right under the Act to have the repairs performed. The tenants have provided a receipt to the landlord and the landlord has refused to pay the invoice.

I order the landlord to pay for the plumbing invoice dated August 27, 2018 in the amount of \$229.95. If this amount is not paid by the landlord and the plumbing contractor continues to pursue the tenants for this outstanding amount, the tenants may pay this amount and then deduct it from a future rent payment.

Pursuant to section 70 of the Act, the director may suspend or set conditions on a landlord's right to enter a rental unit under section 29 of the Act. Section 29 of the Act only addresses restrictions on the landlord's right to enter the "rental unit". The "rental unit" is defined in section 1 of the Act to mean the living accommodation. Residential property is broader and includes the rental unit as well as the parcel of land on which the rental unit is contained.

As per *Residential Tenancy Policy Guideline #7 "Locks and Access"*, The Act does not require that notice be given for entry onto residential property, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord

should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.

In this case, as there is no evidence that the landlord entered the “rental unit” other than as authorized under section 29 of the Act, I make no order to suspend or set conditions on the landlord’s right to enter the rental unit. The landlord had reasonable grounds to for entry onto the “property” as the landlord was responding to a break-in and a broken window.

As the tenants were for the most part successful in this application, the tenants are entitled to recover the filing fee from the landlord. The tenants may deduct a future rent payment in the amount of \$100.00.

### Conclusion

I order the landlord to pay for the plumbing invoice dated August 27, 2018 in the amount of \$229.95. If this amount is not paid by the landlord and the plumbing contractor continues to pursue the tenants for this outstanding amount, the tenants may pay this amount and then deduct it from a future rent payment.

The tenants may deduct a future rent payment in the amount of \$100.00.

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: November 09, 2018

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Residential Tenancy Branch