



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ERP, RP, OLC, LRE, FFT

### Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order for the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order for the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and their two advocates (collectively the "tenant") attended the hearing. The landlord was represented by the named landlord and property manager (collectively the "landlord"). Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to an order for the landlord to make emergency repairs to the rental unit?

Are the tenants entitled to an order for the landlord to make repairs to the rental unit?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

As per the testimony of the parties, the tenancy began on February 1, 2017 on a fixed term until January 31, 2018 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$988.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$475.00 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The tenants testified that their bathtub caulking contains mold and despite cleaning, it remains. The tenants seek an emergency repair order to re-caulk the bathtub. In reply, the landlord testified that the tenants are responsible for maintaining the cleanliness of the bathtub caulking to ensure mold does not occur.

The tenants testified that they have endured an intermittent kitchen sink leak since the tenancy started. They testified that despite many "repairs" including a recent repair in November, it continues to leak. The tenants seek an order to repair the sink and replace the bathtub caulking. The landlord acknowledged the kitchen sink leak is an ongoing problem however she testified that it has been addressed each time the tenants have brought it to her attention. The landlord testified that it was last repaired on November 19, 2018 and was not notified by the tenants that the latest repair was unsuccessful.

The tenants testified that the landlord has repeatedly failed to give proper written notice of entry. The tenants contended that any written notice they have received was not in the proper form and was not legible. They seek an order for the landlord to comply with section 28 and 29 of the *Act* and to suspend or set conditions on the landlord's right to enter. The landlord testified that the parties had established verbal notice and was unaware of the tenants' preference for written notice. The landlord testified that she is prepared to provide 24 hour written notice, moving forward.

## Analysis

### **Emergency Repairs**

Section 33 of the Act describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of repairing:

- major leaks in pipes or the roof,
- damaged 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

I find the tenants’ request for the replacement of the bathtub caulking is not an “emergency repair” within the meaning of the *Act*. Accordingly I dismiss this portion of the tenants’ claim without leave to reapply.

### **Regular Repairs**

Pursuant to section 32 of the *Act*, a landlord must provide and 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.

Regardless of the source of mold, whether it is from neglect on the tenants’ part or wear and tear due to natural forces, the tenants have reported mold and pursuant to section 32 of the *Act*, the landlord has a duty to attend and inspect. Therefore, I order the following;

1. I order the landlord to obtain further evaluation of the bathtub caulking no later than December 27, 2018. If it is determined that the mold cannot be remediated through cleaning, the landlord must have the re-caulking completed no later than January 10, 2019.

Based on the tenants’ undisputed testimony that the kitchen sink has a history of leaking and continues to leak, I order the following;

1. I order the landlord to obtain further evaluation of the leak by a certified plumbing professional no later than December 27, 2018. If the certified plumbing

professional determines that repairs are necessary, the landlord must have the repairs completed by a certified plumbing professional no later than January 10, 2019. Should the certified plumbing professional determine repairs are not necessary, written reasons must be provided by the technician to the landlord who in turn will provide the reasons to the tenants.

### **Comply with the *Act*/Landlord's Right to Enter**

Section 29 of the *Act* sets out the provisions that establish when a landlord can enter a tenanted rental unit. Specifically the landlord must not enter a rental unit unless the tenant gives permission or at least 24 hours and not more than 30 days before entry, written notice is given by the landlord. The notice is not required to be on a prescribed form, but it must clearly state the purpose for entering and the date and time of entry. In this case, I find the instances as described by the tenants do not warrant suspension or conditions on the landlord's right to enter. Instead, I caution the landlord to cease and desist from unauthorized entry and to abide by section 29 of the *Act*. The tenants are at liberty to apply for a monetary award in the future if the landlord does not abide by the provisions of Section 29 of the *Act*.

### **Filing Fee**

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application.

### **Conclusion**

I dismiss the tenants' claim for an emergency repair order, without leave to reapply.

I order the landlord to obtain further evaluation of the bathtub caulking no later than December 27, 2018. If the evaluation reveals repairs are required the landlord must make the necessary repairs no later than January 10, 2019.

I order the landlord to obtain a certified plumbing professional to inspect the kitchen sink no later than December 27, 2018. If the inspection reveals repairs are required the certified plumbing professional must make the necessary repairs no later than January 10, 2019. The landlord must use a certified plumbing professional to conduct the inspection and any necessary repairs to the sink.

I caution the landlord to cease and desist from unauthorized entry and to abide by section 29 of the *Act*

I dismiss the tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit, without leave to reapply.

I order the tenants to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

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: December 13, 2018

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Residential Tenancy Branch