



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      ERP RP MNDC

### Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;

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. No issues were raised with respect to the service of the tenant's application and respective evidence submissions.

### Issues

Should an order be issued requiring the landlord to make repairs including emergency repairs?

Is the tenant entitled to monetary compensation for loss?

### Background and Evidence

The tenancy for this apartment unit began January 15, 2016. The current monthly rent is \$815.00 payable on the 1<sup>st</sup> day of each month.

The tenant is seeking repairs to the bathroom of the rental unit as well as the ventilation system. The tenant is requesting the landlord to repair the caulking around the bathtub. The tenant alleges the bathtub was caulked by a "non-professional" and not applied correctly. The tenant claims that as a result, water is leaking in behind the tub surround down the wall behind the tub causing a mold concern. The tenant also alleges that after

a recent flood, the apartment was not remediated properly and now is likely a health problem. The tenant submitted some pictures of various vents throughout the building and claims they are filled with seagull feathers. The tenant claims there is no proper filtration system.

The tenant is also claiming \$35,000 for interference with the quiet enjoyment of his rental unit and the health and safety of himself and his family. The tenant alleges that on October 25, 2018 a handyman employed by the landlord cut a section of the drywall in the ceiling of the main foyer area. The tenant submits that the drywall contained asbestos for which a stop work order was subsequently issued by WorksafeBC. The tenant submitted a copy of the report from WorksafeBC. The tenant's witness testified that he witnessed the incident and that the landlord did not follow proper procedures to contain the area and there was dust everywhere. The tenant's witness testified that the landlord defied the stop work order and continued to perform work in the area.

The landlord submits that after an incident of a leak in the tenant's bathroom, the maintenance person dried all the walls before replacing and resealing the tub surround. The landlord submits the tub was re-caulked properly. The landlord testified that the tenant's apartment was remediated properly after the leak and the entire area was properly cleaned and dried prior to repairing. The landlord submits the remediation work occurred 8 months ago and the tenant is now claiming the area is mouldy. The landlord testified that they have inspected the area and there is no evidence of any mold.

The landlord testified that on October 25, 2018 they were attending to an emergency leak in the building. The water in the building was shut off to fix the leak. The landlord acknowledged that WorksafeBC placed a stop work order because the drywall cut out of the ceiling was not analyzed for asbestos before cutting. The landlord testified that there was not dust everywhere as alleged by the tenant's witness. The landlord submits that the drywall was soaking wet from the leak so dust could not have been blowing around. The landlord submits that the entire building was without water due to the shut off so he did go back to the area after the stop work order just to duct tape the leaking pipe so the water could be turned back on. The landlord submits that the remainder of the remediation work was all done in accordance to WorksafeBC regulations. The landlord submitted a copy of the WorksafeBC report dated October 29, 2018 removing the stop work order. The landlord also submitted an air clearance certificate obtained October 26, 2018 from an environmental contractor.

### 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

I find the tenant has submitted insufficient evidence that the residential property is not in a state of decoration and repair that complies with health, safety and housing standards required by law. I find the tenant’s claim that the area behind the bathtub is moldy is not supported by the evidence. The tenant’s claim that the ventilation system is a health hazard is also not supported by the evidence.

The tenant’s application requesting repairs including emergency repairs is dismissed without leave to reapply.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

*Residential Tenancy Policy Guideline #16* “Compensation for Damage or Loss” provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is

claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Although the landlord may have proceeded to cut out a section of the drywall in the lobby area without first obtaining proper clearance, I find the actions of the landlord in no way caused the tenant to suffer any loss. The work was being performed in the lobby and not in the tenant's unit. There is no evidence that the tenant was exposed to any hazardous material or that he suffered any negative health effects as a result. The landlord obtained an air clearance certificate the very next day.

The tenant's application for monetary compensation is dismissed without leave to reapply.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 31, 2019

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Residential Tenancy Branch