



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, FFT, MNDCT, OLC, PSF, RP

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"):

- for emergency repairs;
- for an order to provide services or facilities required by the tenancy agreement or law;
- for a monetary claim of \$35,000.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- for an order directing the landlord to comply with the Act, regulation or tenancy agreement;
- for an order for regular repairs; and
- to recover the cost of their filing fee.

The Tenant and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness was available for the Tenant, but he was not called on to give testimony. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me during the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

In the hearing, the Landlords confirmed that the Landlord, C.D.'s last name was spelled incorrectly on the Tenant's Application. Pursuant to my authority under section 64(3)(c) of the Act, I amend the Tenant's Application to correct the legal last name of the Landlord, C.D.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated several matters of dispute on the Application, the most urgent of which is the application for emergency repairs to the rental unit. As I advised the Parties in the hearing, I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request for emergency repairs and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply.

The Parties attended a previous RT B hearing on June 11, 2019, in which they came to a settlement agreement on other matters, including that the tenancy will end at 1 p.m. on July 15, 2019.

### Issue(s) to be Decided

- Should the Landlord be ordered to complete emergency repairs?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2015, with a monthly rent of \$950.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$475.00, and no pet damage deposit.

The Tenant testified that drains in the rental unit clog up and that water comes up from the sewer drains. She also said that there is mould in the bathroom from the roof leaking. She said there are huge gaping holes in the roof. The Tenant uploaded photographs of water stains in the ceiling of the small bedroom and the bathroom. She said in her Application that the fire place is a chief source of heat for the rental unit, but that the Landlords never cleaned the chimney; however, in the hearing, the Parties agreed that the chimney had been cleaned since the Tenant applied for this hearing. The Landlord said that he has repaired the roof at times, but he acknowledged that he is not a professional roofer.

The Tenant submitted a video showing a sink in the basement in which there is a layer of dirt left in a previously clean sink. She said water comes up from the drains into the sink and up through the drain in the floor, as well. The Tenant submitted videos showing that when she turns on the water in the kitchen sink, that it comes up the drain in the basement, so she has to do her dishes in the bathtub.

The Landlords said that there are two drains in the residential property and that the Tenant is able to flush the toilet, with which the Tenant agreed. The Landlords said that they have cleared one drain for the Tenant, which turned out to have been plugged with dog hair. They said if the Tenant had told them about the problems she has had, that they would have addressed them as soon as possible. They said that after they cleared the drain of the dog hair, the Tenant did not come back to them to say that there was anything else wrong.

The Landlords said there is a septic tank and field that was emptied four years ago, before the Tenant moved in. The Parties each referred to different sources, one of whom said that the septic tank must need to be emptied again on one hand, and another source who said it would not need to be emptied yet, given there have been only two people using it over four years.

The Landlords said that in the Spring there is some seepage, but that the Tenant did not tell them to come look at the problem. They said they clear the snow each Spring, to help avoid problems with leakage from Spring run-off. However, they said there was not as much snow this last year, but they kept an eye on it with this in mind.

The Landlords said when they attend the rental unit to collect rent, the Tenant has never pointed out the problems. They said they did not hear about the extent of the problems until she sent them an email in this regard May 2019. The Tenant said that it stinks in

the basement as a result of these drainage problems. The Tenant said that it was this way for the previous tenant, and it will be for the next tenant, if something is not done.

The Tenant submitted an email she received from "B.S." an environmental health protection officer at a regional health authority, who had attended the rental unit to assess the health implications of the sewage system on the residential property. In this email, the health protection officer confirmed the Tenant's complaints. His comments include:

You requested a visit from Northern Health to assess the health implications in relation to the sewage system on the residence you occupy at [rental unit address].

During my visit I noted the septic system receiving system was very slow and it appeared that if we ran water for an extended period of time it would come back into the basement, based on the rise in water level in the floor drain.

My file search revealed that there is no sewage (Old system data) or sewerage system (new System data) on file at [the regional health authority].

The sewer system for the dwelling you occupy would be classed as existing non-conforming. You have occupied this building for several years and as far as you are aware the Septic system has not been serviced. **The recommended interval for emptying a septic tank is every 3 to 5 years.** If a sewage system is not serviced properly it will malfunction, which is what may be happening at your dwelling.

When I looked in what appears to be a septic tank, I saw the tank was full and had what appeared to be a significant scum layer, and if this were a typical septic tank I would say the scum layer is above the outlet to any type of septic field, which would imply the tank or whatever the container below the culvert is, should be emptied. The companies with septic sucker trucks that I called quoted me from \$220.00 and up depending on travel distance, ease of access and the clean-up could include tasks only the property owner can authorize. For example, if the field needs to be cleaned, that costs more.

You stated the black water has come into your basement in the past which would also indicate that the septic system is in need of servicing which would start with

a septic tank emptying, and if that does not solve the problem then further investigation by an authorized person would be required.

[emphasis in original]

This email was dated May 22, 2019, and the Tenant said it was forwarded to the Landlords. In the hearing, the Landlords did not indicate that they had acted on this information.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 33 of the Act sets out what “emergency repairs” means. It says that emergency repairs are “urgent, necessary for the health or safety of anyone or for the preservation or use of residential property.” The Act also states that emergency repairs are 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.

Section 33(2) of the Act requires the Landlord to “post and maintain in a conspicuous place on the 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.”

Based on how the Parties interacted in the hearing, I find that they have had difficulty communicating to some degree. The Tenant was not able to identify the means by which she advised the Landlords about the water related problems she was having, although, the Landlords acknowledged that the Tenant sent them an email on May 10, 2019, with a list of things gone wrong with the rental unit.

Given the acrimony between the Parties, the Tenant has agreed to stay in her trailer during situations in which the Landlords have to attend the residential property to do repairs ordered. However, the Landlords said that they would not be required to attend

for all repairs that are ordered, as the certified professional will be attending in their place. The Landlords will advise the Tenant of impending repair appointments, as required by the Act.

I find from the evidence before me, overall, including the email from the environmental health protection officer I find that the Landlords have been remiss in their obligations to maintain the residential property, particularly in regard to section 32 of the Act:

**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.**

...

[emphasis added]

There was discussion among the Parties in the hearing, and the Landlords expressed willingness to undertake the following actions. Based on this and all the evidence before me, overall, I find that the Landlords have breached section 32 of the Act and that urgent repairs are required for health and safety reasons, and as a result, I make the following orders:

1. I **ORDER** the Landlords to arrange and pay for at their expense a certified professional to inspect the septic tank, and if necessary, to have the tank emptied by this or another certified professional by July 19, 2019.
2. I **ORDER** the Landlords to arrange and pay for at their expense a certified, professional plumber to attend the rental unit to inspect and repair issues related to the slow draining of water, sewage backing up and basement flooding by July 31, 2019.
3. I **ORDER** the Landlords to arrange and pay for at their expense a certified, professional roofer to inspect and repair the roof of the rental unit and/or for the roof to be replaced by July 31, 2019.

I caution the Landlords to comply with section 32 of the Act in the future and that failure to comply with my orders may lead to a recommendation for an administrative penalty under the Act, which carries a maximum penalty of \$5,000.00 per day of non-compliance.

I award the Tenant recovery of the \$100.00 Application filing fee and I make a monetary order of 100.00 in satisfaction of this award.

### Conclusion

The Landlords breached section 32 of the Act in not maintaining the rental unit in a state of repair that complies with health and safety standards. I have ordered repairs be made to the septic tank, septic field, plumbing, and the roof by July 31, 2019.

The Tenant is also awarded recovery of the \$100.00 filing fee and I attach a monetary order in this regard, since the tenancy ends in mid-June.

Any other issues raised by the Tenant in her Application, but not addressed in this decision are severed and dismissed with 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: June 28, 2019

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Residential Tenancy Branch