



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 24, 2019 (the “Application”). The Tenant applied for an order that the Landlord make emergency repairs and for reimbursement for the filing fee.

The Tenant appeared at the hearing. The Property Managers appeared at the hearing for the Landlords. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Property Managers confirmed they received the hearing package and Tenant’s evidence.

The Tenant advised that she did not receive the Landlords’ evidence.

The Property Managers testified that the evidence was sent to the rental unit by registered mail on July 17, 2019. This was only two days prior to the hearing. I looked the tracking number up on the Canada Post website which shows that the package had been delivered to the mailbox on July 18, 2019. The Tenant advised that she had not checked her mail since the package was delivered. I asked the Property Managers why the evidence was sent so late. C.C. advised that he was fine with the evidence being excluded. I excluded the evidence given how late it was served, the fact that the Tenant had not yet received the evidence and C.C.’s agreement that it should be excluded.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlords make emergency repairs?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between Landlord L.S. and the Tenant. The Property Managers confirmed Landlord M.L. is an owner of the rental unit. The tenancy started March 15, 2018 and was for a fixed term ending March 15, 2019. The tenancy then became a month-to-month tenancy. Rent is \$3,500.00 per month due on the first day of each month.

The Tenant sought an order that the Landlords repair the septic system at the rental unit as soon as possible. The Tenant did not seek any other order or details in the order. The Tenant asked for a decision on whether she can remain in the rental unit during the repairs. The Tenant also raised issues of compensation for the septic system not working for the last three months.

C.C. advised that the Landlords have no issue repairing the septic system and are in the process of repairing it. C.C. was agreeable to an order that the Landlords repair the septic system. C.C. was also agreeable to an order that the Landlords have a qualified engineer and contractor do the repairs.

I asked C.C. about the timing of the repairs. I understood C.C. to say that the Landlords have to dig up the field and put a whole new septic system in. I understood him to say this will require drawings, surveys, permits and both engineers and contractors to do the repairs. C.C. said it will take six to eight months to do the repairs given the process the Landlords must go through.

I asked the Tenant about her position on the timeline for the repairs. The Tenant's position on this changed each time I asked her. At first, the Tenant took issue with the six to eight months suggested by C.C. I understood the Tenant to say the Landlords could have repaired the septic system without going to the health authorities. However, the Tenant also acknowledged that the Landlords have gone to the health authorities and so the process the Landlords are now going through is required. Given this acknowledgement, I understood the Tenant to agree that the process will likely take six to eight months. However, the Tenant subsequently disputed that it would take six to eight months. The Tenant relied on two letters she submitted as evidence. The first letter does not provide a timeline for the suggested repairs but does state "Time frame to repair will be based on engineer design and contractor availability". The second letter does not address a timeline. The Tenant acknowledged she had not researched the appropriate timeline.

### Analysis

Section 32 of the *Residential Tenancy Act* (the "*Act*") states:

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.

Section 62(3) of the *Act* states:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The parties agreed that the septic system needs to be repaired. The only order the Tenant sought is an order that the septic system be repaired as soon as possible. C.C. is agreeable to an order that the septic system be repaired and that the Landlords have a qualified engineer and contractor do the repairs.

The only remaining issue is the timeline for the repairs. This is the Tenant's application and she has the onus to prove she is entitled to the order sought pursuant to rule 6.6 of the Rules of Procedure.

I accept the testimony of C.C. that the repairs will take six to eight months given the scope of the work required as explained at the hearing. At one point, the Tenant acknowledged the repairs will likely take this long given the Landlords went to the health authorities about the situation and given how the Landlords have chosen to repair the septic system. The Tenant's letters do not show that a shorter timeline is possible or likely. The Tenant has not presented any other evidence showing a shorter timeline is possible or likely. The Tenant acknowledged she has not looked into a reasonable timeline for the repairs. In the circumstances, I am not satisfied that a shorter timeline is possible or likely. I therefore accept that the repairs will take six to eight months. I find it reasonable to order the Landlords to have the repairs done in six months given this is a septic system issue which impacts the Tenant's ability to use the rental unit.

Given the above, I make the following order pursuant to section 62 of the *Act*:

The Landlords are to repair the septic system at the rental unit within six months of the date of this decision. The Landlords must have qualified engineers and contractors do the repairs.

I note that the Landlords are still required to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the Tenant in accordance with section 32 of the *Act*. This obligation is not suspended or set aside because I have allowed the Landlords six months to repair the septic system. The obligations of the Landlords under section 32 of the *Act* require the Landlords to ensure there are functioning kitchen and bathroom facilities such that the Tenant can use these facilities. For clarity, I make the following additional order pursuant to section 62 of the *Act*:

That the Landlords do whatever is necessary to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the Tenant in accordance with section 32 of the *Act* including do whatever is necessary to ensure the Tenant has functioning kitchen and bathroom facilities.

The Tenant sought a decision about whether she can reside in the rental unit during the repairs. I advised the parties at the hearing that this is not the issue before me. I also

pointed out that there is no application before me from the Landlords seeking to end this tenancy.

The Tenant raised issues relating to compensation. Again, this is not the issue before me as the Tenant has not applied for compensation.

Given the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant is permitted to deduct \$100.00 from one future rent payment.

### Conclusion

I make the following orders:

The Landlords are to repair the septic system at the rental unit within six months of the date of this decision. The Landlords must have qualified engineers and contractors do the repairs.

That the Landlords do whatever is necessary to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the Tenant in accordance with section 32 of the *Act* including do whatever is necessary to ensure the Tenant has functioning kitchen and bathroom facilities.

I award the Tenant reimbursement for the \$100.00 filing fee. The Tenant is permitted to deduct \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 24, 2019

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Residential Tenancy Branch