



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP

### Introduction

This expedited hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order requiring the landlord to make emergency repairs to the rental unit.

The tenant and the landlord's agents, hereafter "landlord", attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary and Procedural Matters

I heard evidence from the parties that they were scheduled for another dispute resolution hearing the next week. I was provided the file number and found that there was a hearing scheduled before the undersigned arbitrator on the cross applications of the parties.

The landlord filed an application seeking an order of possession for the rental unit due to a One Month Notice to End Tenancy for Cause and the tenant filed an application seeking cancellation of the One Month Notice, among other things.

I explored the possibility of combining the two hearings at the present hearing, but the tenant refused to have his next application considered for this hearing.

I informed the parties that the hearing on the tenant's application for emergency repairs would proceed, but that I would defer this decision until after that hearing, as there was a possibility the tenancy may be ending.

It is noted that in the hearing of August 6, 2019, the tenant and landlord reached a settled decision. The parties agreed that the tenant will vacate the rental unit on or before September 30, 2019. As a result, the landlord was issued an order of possession of the rental unit, effective September 30, 2019.

#### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make emergency repairs to the rental unit?

#### Background and Evidence

The evidence showed that this tenancy began on December 1, 2016 and that current monthly rent is \$820.00.

I also heard evidence that the rental unit and residential property was located in a rural area on top of a hill, on 10 acres, 10 kilometers outside of a small town. The landlord lives on the property and the tenant's rental unit is a small cabin located on the same property.

In support of his application for emergency repairs, the tenant submitted that he has been without water for 65 days, which is essential to be able to live. The tenant said that since the beginning of the tenancy, he has brought in his own drinking water, but now the well supplying any water has dried up.

The tenant submitted that he attempted to bring up water for his own use for other purposes, such as watering, washing dishes and flushing toilets, but that the landlord forbid him to add the water to the well reservoir. The tenant submitted that the landlord put up a no-trespassing sign. This action resulted in the RCMP being called to the property.

The tenant submitted that the landlord has done nothing to return the use of their water, although she had a well technician called to fix the well. The tenant submitted another option is a water service truck holding 4000 gallons of water.

The tenant submitted other options are a portable tank or activating the other well.

The tenant said the landlord has issued him an eviction notice, but not the other tenant living in another cabin on the residential property.

The tenant's relevant evidence included emails between the parties, photos, a written narrative, and receipts.

In the written narrative, the tenant submitted that he had been served an "illegal eviction notice" but that it was not set for hearing until August 6, 2019. The tenant further writes that he had spoken to a previous tenant from five years ago, who verified even then the current well was barely supplying water.

#### *Landlord's response-*

The landlord submitted that for the entire length of the tenancy, the water situation has been precarious. The landlord submitted the 32 year old well failed at the end of March 2019 and has completely stopped producing water and there is no available district water supply.

The landlord submitted that she does not have useable water herself, as she often washes her clothes and takes showers at friends' houses. The landlord said she brings up her drinking water separately in her vehicle.

The landlord submitted that evidence from a pump company outlining the times they have visited the residential property, as follows: On November 5, 2018, the company was dispatched to diagnose and repair, if possible a no water call. The tech found the well to pump at 212 feet and the water level was at 208 feet. The tech found the pump motor running amps running low, another indication that the well did not have enough water.

On November 28, 2018, the tech company stated that they again were dispatched to diagnose a no water call and found the well was dry. The company installed a water protection device and a new motor control box.

On April 5, 2019, a service call found the same results and the landlord was instructed to take measurements of her cistern to gauge the amount of water coming in. This disclosed that more water was being used than being delivered to the well.

The landlord submitted a copy of a plumbing company's billing statement, showing well work completed on October 25, 2018, for a cost \$5,410.89. The landlord submitted that she has incurred over \$6,200.00 since October 2018 to improve the water system for the tenant's cabin.

The landlord submitted a copy of a water service company's letter informing the landlord they cannot deliver water to the residential property due to the poor and unsafe condition of her driveway. The landlord explained that the road to her residential property was steep, rough and rocky.

The landlord submitted that the tenant has been packing water to irrigate his marijuana "Grow Op".

The landlord submitted that her friend went to check on her property while she was away, and he discovered that the tenant had put locks on the front gates.

The landlord submitted that she is now faced with installing a whole new system for her house and the two cabins, as the well is leaking, and not repairable.

### Analysis

As defined by section 33 of the Act, emergency repairs are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and 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.*

In this case, the tenant said that this issue has been ongoing for 65 days. I find this evidence demonstrates that the water issue is not urgent.

I also am not convinced that the tenant would have made this application for an expedited hearing, had he not been served with the landlord's One Month Notice, which further substantiates that the matter was not urgent. I make this determination due to the repeated references to the One Month Notice made by the tenant in his written evidence.

I also considered that the tenant is aware that the water supply has never been supplied in a traditional manner, as he has brought up his own water since the beginning of the tenancy.

I find the landlord submitted sufficient evidence to demonstrate that she has addressed the matter of water, through her receipts and statements from the well company and a water supply company.

Given the rural, remote location of the rental unit, the lack of access to the residential property, and the ongoing nature of the tenancy which has never had an adequate supply of water, causing the tenant to carry his own water, along with the fact the tenancy is ending no later than September 30, 2019, I decline to order the landlord to make emergency repairs.

Additionally, as I have found that the tenant has not proven the repairs mentioned in his application were urgent, I dismiss his application seeking an order requiring the landlord to make emergency repairs to the rental unit, without leave to reapply.

### Conclusion

The tenant's application is dismissed, 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: August 7, 2019

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Residential Tenancy Branch