



# 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 as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for an expedited hearing for an order for the landlord to make emergency repairs for health and safety reasons, and to recover the cost of the filing fee.

The tenant, a support person for the tenant PR ("support person"), and the landlord attended the teleconference hearing and gave affirmed testimony. The landlord called into the hearing twenty minutes late. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. The evidence related to my findings and/or orders are referred to below.

Neither party raised any concerns regarding the service of documentary evidence with the exception of some photographic evidence, that the tenant referred to and the undersigned indicated that some of the photographs were not served on the Residential Tenancy Branch ("RTB") and were excluded as a result.

### Preliminary and Procedural Matter

The parties confirmed their email addresses during the hearing and confirmed that the decision would be emailed to both parties.

### Issues to be Decided

- Should the landlord be ordered to make emergency repairs for health or safety reasons?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties confirmed that a written tenancy agreement does not exist between the parties. The tenant stated that a verbal tenancy began in November of 2017. The landlord did not dispute this during the hearing. The tenant stated that monthly rent is \$600.00 per month and is due on the first day of each month. The landlord did not dispute this during the hearing.

The tenant stated that they were seeking four emergency repairs comprised as follows:

1. Repair leaking and dripping kitchen and bathroom plumbing fixtures.
2. Repair water leaks in the roof and walls
3. Repair damaged front window allowing cold air and water to enter rental unit.
4. Repair leaking bathtub drain under rental unit.

Regarding items 1, 3 and 4 above, the tenant confirmed that photographic evidence was not submitted in evidence to support 1, 3 and 4 as indicated above. The landlord denied that there were any current problems with 1, 3 and 4 as claimed by the tenant. As the tenant has the onus of proof to establish that emergency repairs are required, items 1, 3 and 4, were dismissed during the hearing due to insufficient evidence.

Regarding item 2, the tenant referred to at least two colour photos submitted in evidence, which appear to show water damage staining on the ceiling of the rental unit. The landlord stated that they paid the tenant to repair the tenant's own roof, which I will address later in this decision below. The tenant claims that water is leaking through the roof and walls of the rental unit and the landlord stated that it the intention of the landlord to demolish the rental unit, and that proper notice under the *Act* will be served upon the tenant. As of the time of this hearing, October 11, 2019, there is no evidence before me that the tenant has been served with a 4 Month Notice to End Tenancy for Demolition of Rental Unit by the landlord.

### Analysis

Based on the documentary evidence presented, the testimony before me, and on the balance of probabilities, I find the following.

Firstly, section 32(1)(a) and (b) of the *Act* applies and states:

### **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]

Section 33 of the *Act* also applies and states:

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means 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 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.

[Emphasis added]

In addition, section 6(1)(3)(c) of the *Act* applies and states:

### **Enforcing rights and obligations of landlords and tenants**

**6** (3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) **the term is unconscionable,** or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

[Emphasis added]

As a result of the above, and considering the photographic evidence before and the landlord's response by claiming that the tenant was hired to repair their own roof, I find that such a term is unconscionable for two reasons. Firstly, the tenant is not an agent for the landlord and secondly, the landlord must not attempt to pass on their duties to under section 32 of the *Act* onto the tenant. Therefore, I find that any such arrangement for the tenant to repair their own roof is unenforceable and unconscionable.

Furthermore, I am satisfied based on the photographic evidence before me that I find supports that a roof leak exists in the rental unit, make the following orders pursuant to section 62(3) of the *Act*:

**I ORDER** the landlord to hire a certified roofing contractor at the landlord's expense to inspect and if necessary, repair the rental unit roof if any leaks in the roof and walls are discovered upon inspection by the certified roofing contractor **no later than October 25, 2019 by 5:00 p.m. Pacific Time.**

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to sections 67 and 72 of the *Act*, in the amount of **\$100.00** to recover the cost filing fee. Therefore, I authorize a one-time rent reduction in the amount of **\$100.00** from November 2019 rent, in full satisfaction of the tenant's recovery of the cost of the filing fee.

### Conclusion

The tenant's application for emergency repairs is partially successful.

I have made one order described above, which remains enforceable under the *Act*.

Should the landlord fail to comply with my order, the tenant is at liberty to apply for further remedy under the *Act*, including but not limited to monetary compensation. In addition, should the landlord fail to comply with my order, the landlord could be recommended for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under section 87.4 of the *Act* is up to \$5,000.00 per day.

The tenant has been authorized for a one-time rent reduction in the amount of \$100.00 from November 2019 rent, in full satisfaction of the tenant's recovery of the cost of the filing fee, pursuant to section 72 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 15, 2019

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Residential Tenancy Branch