



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNR, FF*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order to recover the cost of having the clogged bath tub repaired and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Has the landlord fulfilled her responsibilities as a landlord with regard to maintenance and repairs? Is the tenant entitled to the filing fee?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started on September 01, 2016. The current monthly rent is \$1,913.46 payable on the first of the month. The accommodation consists of a one-bedroom condo. The landlord named in the tenant's application manages the unit for the owner and is the contact person for the tenant.

The tenant stated on the night of Friday, May 31, 2019, she found out that the bathtub was clogged and unusable. Since it was around 10pm when the tenant noticed the

problem, she waited till the next morning to call the landlord. The tenant's call went to voice mail.

The landlord agreed that her voice mail message informs the caller that if the problem was an emergency the landlord would call back within 10 minutes or if not an emergency, then the landlord would call back the next business day. The landlord did not call back within 10 minutes.

The landlord stated that she received the message but determined that the problem was not an emergency and decided to wait till the next business day which was Monday June 03, 2019, before she returned the tenant's call.

The tenant stated that the condo has only one bathroom and therefore she and her spouse were unable to shower or bathe until the tub was repaired. The tenant stated that the problem occurred during summer and it was difficult to wait for three days before she showered and that having to go into work on Monday morning, she stated that she needed to bathe before then.

The landlord stated that the building has a gymnasium which has showering facilities and is available for the tenant to use. The tenant stated that she did use the gymnasium when it was convenient.

The tenant stated that she waited till 4pm on Sunday evening before she contacted a plumber to have the clog removed. The plumber charged the tenant \$224.63. The tenant asked the landlord for reimbursement. The landlord offered the tenant a portion of the amount the plumber charged her.

The landlord's explanation was that the problem was not an emergency and could wait for three days until the landlord could get her own plumber to attend to it. The landlord also informed the tenant that her plumber would have had it done on June 03, 2019 at a lower cost of \$110.25. The landlord offered to pay the tenant this amount towards the cost she had incurred. The tenant refused to accept the landlord's offer.

The tenant is claiming the full amount that she paid to the plumber plus the recovery of the filing fee.

### **Analysis**

Section 32 of the *Residential Tenancy Act*, addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Based on the documents filed into evidence and the testimony, I find that the landlord determined the problem to be a non-emergency and chose not to return the tenant's call for help prior to the first business day, following the call.

### **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.
- (2) The landlord must post and maintain in a conspicuous place on 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.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
  - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
  - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
  - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:
- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
  - (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
  - (c) the amounts represent more than a reasonable cost for the repairs;
  - (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Based on section 33 of the *Residential Tenancy Act*, I find that a clogged drain does not fit the definition of emergency repairs. However the landlord is responsible for providing facilities that are included in the rent. I accept the tenant's testimony that not showering or not bathing for three days is not an option in Summer. I further accept that the tenant had to go to work on Monday morning and therefore it was imperative that she showered or bathed before doing so.

The tenant contacted the landlord and did not hear back within 10 minutes as the voicemail message informed the tenant. The tenant decided that it was not practical to wait till June 03, 2019 for the repairs and on June 02, 2019 at 4 pm she contacted a plumber to have the work done.

I find that the tenant's claim is reasonable and that she has provided proof to support her claim. I grant the tenant \$224.63 for the cost she incurred to fix the bath tub. Since the tenant has proven her case, I grant her the recovery of the filing fee.

Overall the tenant has established a claim of \$324.63. The tenant may make a onetime deduction of this amount from a future rent.

### **Conclusion**

The tenant may make a one-time deduction of **\$324.63** from a future rent.

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: October 15, 2019

---

Residential Tenancy Branch