



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1199946 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

This hearing convened as a Tenants' Application for Dispute Resolution, filed on October 15, 2019, in which the Tenants requested an Order for emergency repairs and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on November 12, 2019 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

This hearing convened as an expedited hearing pursuant to Rule 10 of the *Residential Tenancy Branch Rules of Procedure*. As such hearings are conducted on an expedited basis, there are shortened rules for service of evidence.

### **10.2 Applicant's evidence for an expedited hearing**

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

### **10.3 Serving the notice of dispute resolution proceeding package**

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;

- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

A review of branch records indicates the Tenants submitted the evidence in support of their claim 14 days prior to the hearing.

The Tenants' late delivery of evidence was not raised as an issue by the Landlord. Rather, the parties agreed that all evidence that each party provided had been exchanged and no issues with respect to service or delivery of documents or evidence were raised.

I therefore considered the Tenants' late evidence. I also reviewed all oral and documentary evidence (which was specifically brought to my attention by the parties during the hearing). However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Should the Landlord be Ordered to make emergency repairs?
2. Should the Tenants recover the filing fee?

### Background and Evidence

In support of their claim, the Tenant, P.K., testified that the tenancy began November 2017. He stated that they originally rented the property from a property management company. Currently, rent is \$2,300.00 per month.

In terms of emergency repairs the Tenant stated that there is no heat in the home, the water supply is unsafe, and they do not have keys to the exterior doors.

The Tenant stated that the heat pump stopped working in November of 2018. He claimed that he raised this as an issue with the previous and current landlords and stated that he has had no response from anyone in 12 months. He stated that to heat the home, every room now has a space heater, which is inefficient and poses as safety hazard.

The Tenant confirmed he was aware that pursuant to section 33 of the *Act*, he could attend to the required repairs to the heat; however, he stated that he is informed that the heat pump is going to cost \$10,000.00, which he cannot afford, and to his knowledge no one will do this repair without the consent of the Landlord.

The Tenant also testified that the water issue is an enormous problem. He characterized the problem as relating to the quality of the water, as well as the supply. He stated that the water is undrinkable, is regularly shut off, and the lack of water pressure is such that various appliances will not operate. He noted that there are two wells on site. He stated that he believes that when construction occurred on the neighbouring vineyard (which is also owned by the Landlord) the irrigation system for the vineyard was erroneously tied to the residential water supply. The Tenant believes that the irrigation system got tied into the household water such that when they bleed the irrigation lines for the vineyard, they get air and mud blowing through their lines in the house. The Tenant stated that what is necessary is to have the Landlord separate the domestic supply from the irrigation supply, as these problems did not exist prior to the construction. He confirmed that he is employed in a related trade such that he has knowledge of such matters.

In terms of how they have dealt with the water issues, the Tenant stated that they have purchased bottled water for drinking and they back feed the house from their swimming pool so they can flush the toilets when the water is off.

In terms of the locks, the Tenant initially claimed that they do not lock the doors. He then clarified that they have one key for one door, and they lock the others from the inside.

The Tenant also testified that they have been trying to resolve these issues for over a year with both the previous landlord, and the new landlord who he believes took over ownership of the property in the Spring of 2019. The Tenant claimed that when he brought this to the current Landlord's attention their response is, "if you don't like it move out".

In response to the Tenant's submissions the Landlord's representative, J.S., testified as follows.

J.S. confirmed that he was aware that the heat pump was broken. He stated that they "did not have rent" and as a result they did not have "trust". J.S. also stated they have been in touch with a contractor, but he is "away". He further stated that they are "very slow on wanting to fix the heat pump because of the rent", and that "they can't carry forward with fixing all this without having any rent paid". J.S. testified that the Tenants owe approximately \$18,400.00 in outstanding rent.

J.S. then stated that he was only informed in September of 2019 that the heat pump was not working. He stated that at the time they believed that the tenancy was going to end on October 26, 2019, pursuant to the fixed term and it was their intention to fix the problems with the house after the tenancy ended and before the winter. He acknowledged he is now aware that a fixed term tenancy reverts to a month to month at its expiration.

J.S. stated that they took ownership of the property in March 2019. He testified that they were informed by the Tenant, in May or June 2019 that there were issues with the water, and they took care of it right away. Introduced in evidence was a copy of a receipt from August 15, 2019 confirming that the landlord paid \$4,651.99 to have the water quality tested and repaired. J.S. further confirmed that to his knowledge the issue was resolved.

The receipt provided by the Landlord indicates the following work was completed at the time:

1	Comp A Water Quality	\$425.00
	Service call to take samples	\$115.00
	Water Treatment	
1	Viqua AWP 32 EB Water Softener	\$1347.00
1	Viqua 1HS 10 D4	\$963.00
1	Ecosoft 6 Stage RO Drinking Water System (waiting to install)	\$487.00
	Miscellaneous Plumbing	\$130.00
	Labour	\$740.00

J.S. testified that he was not aware that the Tenants had issues with the locks.

In reply the Tenant noted that the receipt clearly indicated that the filtration system was not installed and was “waiting to install”.

The Tenant confirmed that he started withholding rent in May of 2019 because the Landlord would not maintain the property. He stated that for the first three months the new Landlord took over ownership of the property he had no way of paying rent as he didn't have any contact information for the Landlord. The Tenant also confirmed that he received the 10 Day Notice on October 31, 2019 and made an application to dispute the Notice. A review of branch records indicates that the parties have a subsequent hearing on December 19, 2019 dealing with the validity of that notice, as well as other relief claimed by both parties. The file numbers for those matters is noted on the unpublished cover page of this my Decision.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

The Tenants seek an order that the Landlord make emergency repairs to the rental unit. Emergency repairs are as defined in section 33 of the *Act* as follows:

**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.

After consideration of the testimony and evidence before and on a balance of probabilities I find as follows.

I am satisfied that the water supply and primary heating system constitute emergency repairs as defined by section 33.

While section 33 allows a tenant to make emergency repairs and recover the funds spent by withholding rent, I accept the Tenant's evidence that the cost to repair the water system and heat pump are not within their means.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

**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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

**8 (1) Landlord's obligations:**

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

I find the Landlord has failed to maintain the rental unit as required by section 32 of the *Act* and section 8 of the *Regulations* by failing to repair the main heating system and the water supply.

While it would have been preferable to have a report from a qualified expert detailing the issues with the water system, on balance, I accept the Tenants' evidence that the water system continues to have issues in terms of quality and supply. Although the evidence indicates the Landlord took some steps to address these issues, the receipt provided by the Landlord also confirms the water drinking system was not installed.

I therefore order as follows:

- 1. Within seven (7) days of the date of receipt of this Decision, the Landlord shall:**
  - a. install the water drinking system referenced on the receipt dated August 15, 2019 from V.C.P.**
  - b. provide written confirmation from V.C.P., that the irrigation system for the vineyard and the residential water system for the rental unit are separate.**

- 2. Should the vineyard and rental unit water systems not be separated, the Landlord shall make repairs to the rental unit water supply to ensure it is safe for drinking and is not negatively affected by the neighbouring vineyard.**

I accept the Tenants' evidence that the main heating system stopped working the fall of 2018. I also accept their evidence that they informed the previous landlord, as well as the current Landlord, of this problem.

The Landlord's representative, J.S., testified that they have been "slow" to address the heat issue as the Tenant has not paid rent. The Tenant testified they have been withholding rent because the Landlord will not maintain the property. Both parties have taken positions which are not supported by the law.

A tenancy is a business relationship and the parties are responsible for knowing their rights and obligations under the *Act* and the *Regulations*. A landlord who does not receive rent may issue a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46. A landlord may not withhold a service or facility as an attempt to force a tenant to move out. Similarly, a tenant may make an application for an order that the landlord make repairs, or provide services or facilities, in addition to claiming a rent reduction when such services or facilities have been withheld, or the tenancy devalued. A tenant may not withhold rent, except in very limited circumstances, as an attempt to force the landlord to make repairs or provide services or facilities. Those limited circumstances include the following:

- A tenant may withhold rent in the event the landlord accepts more than 50% of the rent for a security or pet damage deposit (as provided for in section 19(2) of the *Act*).
- A tenant may withhold rent in the event the landlord accepts rent over and above that which is permitted by the *Act* and the *Regulations* (as provided for in section 43(5) of the *Act*).
- A tenant may withhold rent in the event an Arbitrator authorizes the tenant to withhold or reduce their rent.
- A tenant may withhold rent in the event a tenant pays for emergency repairs as prescribed by section 33(7) of the *Act*.



In any event, the evidence is clear that the Landlord is aware the heat pump doesn't work and has not taken any steps to repair it. While this tenancy may end at some future time due to non-payment of rent, or for some other reason, that does not relieve the Landlord of their obligations pursuant to the *Act* and the *Regulations* to maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant.

I therefore order as follows:

**3. Within fourteen (14) days of the date of receipt of this Decision, the Landlord shall repair the main heating system in the rental unit.**

Initially the Tenant testified that they were unable to lock their home as they do not have keys to the exterior doors. Similarly, on the Tenants' Application they wrote: "we have never had a key for any of the five exterior doors, cannot lock house ever." During the hearing before me, the Tenant conceded that they have one door which is lockable from the outside and are able to lock the other doors from the inside. I am not satisfied this request constitutes an *emergency repair* as contemplated by section 33 of the *Act* as I find the locks are not damaged or defective. The evidence indicates the Tenants can and do lock the rental unit and are able to unlock one door from the outside. I therefore decline the Tenant's request that I order the Landlord to make emergency repairs to the rental unit locks.

As the Tenants have been substantially successful in their application, I grant them recovery of the filing fee. They shall be credited \$100.00 towards their next month's rent, or any rental arrears should this tenancy end.

Conclusion

The Tenants' Application for an Order that the Landlord make emergency repairs is granted in part. The terms of my Order are as follows:

- 1. Within seven (7) days of the date of receipt of this Decision, the Landlord shall:**
  - a. install the water drinking system referenced on the receipt dated August 15, 2019 from V.C.P.**

- b. provide written confirmation, V.C.P., that the irrigation system for the vineyard and the residential water system for the rental unit are separate.**
- 2. Should the vineyard and rental unit water systems not be separated, the Landlord shall make repairs to the rental unit water supply to ensure it is safe for drinking and is not negatively affected by the neighbouring vineyard.**
- 3. Within fourteen (14) days of the date of receipt of this Decision, the Landlord shall repair the main heating system in the rental unit.**

The Tenants' request that the Landlord be ordered to make emergency repairs to the exterior door locks on the rental unit is dismissed.

The Tenants are entitled to recover the filing fee and may withhold \$100.00 from their next month's rent or be credited this sum towards any rental arrears should the tenancy end.

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: November 13, 2019

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Residential Tenancy Branch