



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 583230 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

This expedited hearing dealt with the tenant's application against the landlord under the *Residential Tenancy Act* (the Act) for:

- an order requiring the landlord to carry out emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Although I left the teleconference hearing connection open until 9:55 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M., the landlord did not attend this hearing. The tenant (DS) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

I accept the tenant's testimony that the landlord was served with the Notice of Hearing and evidence (the Materials) by registered mail on January 21, 2020, in accordance with section 89 of the Act. The registered mail tracking number is reproduced on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5<sup>th</sup> day after it is mailed. Given the evidence of registered mail I find the landlord is deemed to have received the Materials on January 26, 2020.

### Issues to be Decided

Is the tenant entitled to:

- an order requiring the landlord to carry out emergency repairs?
- authorization to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained Rule 7.4 to the attending party; it is her obligation to present the evidence to substantiate her application.

The tenant testified the periodic tenancy started on September 01, 2015. Monthly rent is \$1,102.00, due on the first day of every month. At the outset of the tenancy a security deposit of \$500.00 was collected and the landlord still holds it in trust.

The tenant testified that since December 2018 there is a major leak to the roof and the ceiling of her top floor rental unit leaks every time it rains. The tenant has contacted the landlord several times since December 2018. The tenant uploaded text messages with the landlord over the period of December 13, 2018 to January 12, 2020 as evidence of her constant communication with the landlord about the major leak in the roof.

The tenant uploaded into evidence photographs of the ceiling falling down and the bins in her rental unit collecting water and chunks of the ceiling.

On November 27, 2019 the landlord authorized the tenant to withhold all rent for December 2019 as compensation for not repairing the major leaks to the roof. In December the roof continued to leak. In January 2020 the roofer went to the tenant's rental unit every week.

The tenant testified that after she filed an application for dispute resolution she has been in contact with the landlord about the continuing need to repair the major leaks in the roof but the repair has still not being completed.

The tenant also testified she has been diagnosed with migraines due to high stress caused by the major leaks in the roof. The tenant missed work in January 2020 on days 06, 14, 15, 22, 26, 27 and 28 because of health issues. The tenant also testified most of her furniture is ruined, there is mold throughout her rental unit and each day she needs to replace several 75 litre bins in her rental unit that are constantly filling up with water from the roof leak.

### Analysis

Section 32 (1) of the Act states that:

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.

Residential Tenancy Act Regulations Schedule 8, in relevant part, states:

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

The legislation makes the landlord responsible for making repairs to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards.

Section 33 (1) of the Act states:

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

Residential Tenancy Branch Policy Guideline 51 states:

Order for Emergency Repairs

Under section 33 of the RTA and section 27 of the MHPTA, emergency repairs are defined as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of property, and made for the purpose of repairing:

- major leaks in pipes,
- major leaks in the roof (RTA only)

I accept the tenant's undisputed testimony, photographs and text messages the landlord has failed to repair major leaks in the roof which are necessary for preservation and use of the residential unit. I find the landlord must provide an effective solution for the major leak in the roof, pursuant to sections 33(1)(a), (b) and (c)(i) and 32(1)(a) and (b).

I order the landlord to:

- (1) immediately hire a qualified individual roofer or a qualified roofing company to repair the major leaks to the roof of the rental property.
- (2) Mitigate the damage to the tenant's personal property by taking appropriate actions to which the tenant agrees.

Section 65(1)(f) of the Act allows me to reduce the future rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find the major leaks to the roof cause the rental unit to be of little to no value to the tenant because of the continued entry of rain water into the rental unit and damage to the tenant's property. The landlord waived 100% of the rent for December 2019 thereby acknowledging the reduction in the value of the tenancy. Thus, in accordance with section 65(1)(f) of the Act, I order the rent due on March 01, 2020 to be reduced by \$1,002.00 to \$100.00

Should the repair of the major leaks to the roof not be completed by March 01, 2020, all the future rent due after that date is reduced to \$0.00 until the parties agree the repair is completed or the landlord obtains an order from the Residential Tenancy Branch confirming that the emergency repair now ordered is satisfied.

As the tenant is successful with her application, pursuant to section 72 of the Act, I authorize her to recover the \$100.00 filing fee. I order that this amount be deducted from the rent payment due on March 01, 2020.

### Conclusion

Pursuant to sections 65(1)(f) and 72(2)(a) of the Act, the tenant's rent payment due on March 01, 2020 is reduced to \$0.00.

The landlord is ordered to (1) immediately hire a qualified individual roofer or a qualified roofing company to repair the major leaks to the roof of the rental property, (2) mitigate the damage to the tenant's personal property by taking appropriate actions as agreed to by the tenant. I also order (3) that if the repairs are not completed by March 01, 2020, all future rent is reduced to \$0.00 until the parties agree the repair is completed or the landlord obtains an order from the Residential Tenancy Branch confirming that the emergency repair has been completed.

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*.

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

Dated: February 11, 2020

---

Residential Tenancy Branch