



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

### Issues(s) to be Decided

Should any orders be issued against the landlord to perform emergency repairs of this rental unit?

### Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 1, 2016. Monthly rent is currently set at \$1,022.40, payable on the first of the month. The landlord collected a security and pet damage deposit in the amount of \$474.00 each deposit.

The tenant applied for emergency repairs to this rental unit. The tenant has moved out on a temporary basis as she feels the rental unit may not be safe to reside in.

On February 1, 2020, the tenant discovered water damage in her rental unit. After the landlord was informed, the landlord investigated, and rented a commercial dehumidifier and used a fan to deal with the matter. The landlord submits that after he discussed the matter with the tenant, they both agreed to proceed with repairs.

The tenant had concerns about her health, and her friend who works for a remediation company, assisted her in obtaining an analysis to test for mould and asbestos. The tenant testified that the results are from an independent, certified laboratory, and in the analysis mould and asbestos was found in the samples.

The landlord testified in the hearing that the repairs are now complete in the home, and that the remaining work that remains are cosmetic as the landlord intends to occupy the entire home once the tenant moves out pursuant to the 2 Month Notice to End Tenancy for Landlord's Use.

In his evidentiary materials, the landlord provided his qualifications, which included a background as an environmental health officer / public health inspector since 1995, which includes experience inspecting for mould in housing. The landlord's opinion is that the home is safe for occupancy, and no further testing, cleaning, or repairs are required.

The landlord expressed his concerns about the fact that the tenant had utilized the service of a friend to assist in the analysis, as well as the reliability and validity of the tests in relation to the issue of whether the rental unit is safe for occupancy.

### Analysis

Section 32 of the *Act* reads in part as follows:

**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...*

*(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...*

It is disputed by both parties as to whether the landlord has maintained the premises in accordance with section 32 of the Act. It is undisputed that there was an issue with water in the rental unit, that required immediate repairs. It was also undisputed that the landlord had responded immediately by using a dehumidifier and fan, and repairing the damaged drywall.

The tenant's concern is the existence of mould growth and asbestos that could adversely affect her health. The tenant undertook her own testing with the assistance of her friend who works for a remediation company. The tenant testified the results show the existence of mould and asbestos from the samples submitted, and has moved out as she is concerned about her health and safety. The landlord, based on his own expertise and experience, questioned the reliability of the testing that was done as the remediation company was owned by the tenant's friend, and the landlord believes that the home is safe for occupation.

In light of the testimony and evidence before me, I find that the tenant has provided sufficient evidence to support that the samples she had submitted indicate the existence of mould and asbestos. The question is whether the existence of these two matters poses a health risk to the tenant or anybody residing in the rental unit. The landlord questioned the impartiality, validity, and reliability of the testing as the tenant was assisted by a friend. Although I accept the fact that the landlord has an expert background that gives credibility to his findings, I find his concerns about impartiality also apply to himself as he is a party to this dispute, and is therefore is not in a position to make independent or impartial findings.

Although the landlord has issued a 2 Month Notice to End Tenancy with the intention to reside in the rental unit himself, the tenant has the right to dispute this Notice. Until a decision is made by an Arbitrator about whether this tenancy is to continue or not, both

parties are bound by their obligations under the *Act* and tenancy agreement, including a duty to ensure that the repairs undertaken comply with health, safety and housing standards required by law. I find that the tenant has provided sufficient evidence to support that further investigation and testing is required to make a determination about whether the home is safe for occupancy.

Given the testimony and evidence before me, I order the landlord to retain the services of licensed company to inspect and, as required, repair the rental unit to an adequate level of occupancy as set out in sections 32 and 33 of the *Act*:

I order the landlord to retain the services of a licensed remediation company to inspect and perform remediation as required in this rental unit to ensure that the rental unit meets health and safety standards.

I order that the landlord obtain a written report of the above-noted inspection by licensed tradespeople and provide a copy of this report to the tenant within one week of the landlord having received this report.

I order the landlord to undertake this inspection and undertake necessary repairs performed by licensed tradespeople as soon as possible.

In the event that no repairs or remediation is required, I order that the landlord obtain a report from a licensed remediation company confirming this, and provide this to the tenant within one week of obtaining a copy of this report.

### Conclusion

I allow the tenant's application to obtain emergency repairs as required.

I make the following orders:

I order the landlord to retain the services of a licensed remediation company to inspect and perform remediation as required in this rental unit to ensure that the tenant has access to an environment that meets health and safety standards.

I order that the landlord obtain a written report of the above-noted inspection by licensed tradespeople and provide a copy of this report to the tenant within one week of the landlord having received this report.

In the event that no repairs or remediation is required, I order that the landlord obtain a report from a licensed remediation company confirming this, and provide this to the tenant within one week of obtaining a copy of this report.

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: March 31, 2020

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Residential Tenancy Branch