



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      ERP FFT

### **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 repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:52 am in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 am. The tenant 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.

The tenant testified she served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on March 7, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord is deemed served with this package on March 12, 2020, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order to the landlord to make repairs to the rental unit; and
- 2) recover their filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The rental unit is located on the upper floor of the residential property. The tenant moved into the rental unit on February 1, 2015. She entered into a tenancy agreement with the prior owner, TS. Monthly rent is \$825. Since the start of the tenancy, ownership of the residential property has changed hands twice. The current owner is the landlord named in this application. It acquired the residential property in 2018. At the start of the tenancy the tenant paid TS a security deposit of \$412.50. The tenant testified that no deductions have been made from the deposit and no portion of it has been returned to her.

The tenant brought this application on an expedited basis. She is seeking emergency repairs be made to the clothes dryer and to the roof.

The tenant testified that the clothes dryer's motor is failing, makes loud grinding noises, and causes a burning smell. She testified that she is afraid her clothes will catch fire.

The tenant testified that roof leaks water into the rental unit through the skylight and the chimney. She testified that water pours into the rental unit from the chimney leak when it rains, and that she has to set buckets up to catch water. The chimney itself is connected to a metal stove, the top of which is rusted from the water falling on it. The tenant submitted photos of the chimney, skylight, and the stove, which corroborate this testimony.

The tenant testified that roof leak has been an ongoing issue. She testified that the prior owners of the residential property attempted unsuccessfully to repair the leaking roof. She testified that she advised the landlord in writing of the leaking roof in November 2018 (a copy of the letter was submitted into evidence), and asked that it be repaired, but that the landlord has not taken any steps since then to repair the roof.

The tenant testified that she installed new flashing around the chimney, at her own expense, in an effort to stop the leak, but that this did not fix the problem. She testified that she is concerned that a larger structural problem may exist.

## **Analysis**

The scope of relief that is possible to be granted at an expedited hearing is very narrow, Policy Guideline 51 states:

Expedited hearings are usually limited to applications for dispute resolution for:

- an early end to tenancy under section 56 of the RTA and section 49 of the MHPTA,

- an order of possession for a tenant under section 54 of the RTA and section 47 of the MHPTA, or
- emergency repairs under section 33 of the RTA and section 27 of the MHPTA.

[...]

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 the roof (RTA only),

[...]

Emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control.

As such, I decline to make any order related to the repair of the clothes dryer.

However, applications for an order for the landlord to repair major leaks in roofs are permitted to be brought at an expedited hearing.

Based on the uncontroverted testimony of the tenant, and the documentary evidence submitted, I am satisfied that the roof of the rental unit has at least one significant leak in it and allows water to enter the rental unit through the chimney and the skylight.

Section 32 of the Act 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.

I find that by failing to repair the leaks in the roof, the landlord has breached this section, and caused the rental unit not to be suitable for occupation by the tenant. The tenant is entitled to a living space with a roof that does not leak or require her to set buckets up when it rains to catch the falling water.

Accordingly, I order that the landlord repair the roof so that it does not leak water into the rental unit. If the landlord has not completed the repairs to the roof by April 30, 2020, the tenant may deduct 10% (\$82.50) from her May 2020 rent. If the repairs are not completed by May 31, 2020, the tenant may deduct 20% from her June 2020 rent. The tenant may deduct an additional 10% from each subsequent month's rent (up to a maximum of 90%) for each month the roof has not been repaired.

By consent of the tenant, and notwithstanding the restrictions on landlord's access set out at section 8 of *Residential Tenancy (COVID-19) Order*, MO 73/2020 (*Emergency Program Act*) (the "**Emergency Order**"), the tenant agrees to grant reasonable access to the rental unit to the landlord or its agent to make these repairs, if the landlord gives notice in accordance with the Act. The tenant may revoke this consent at any time by notifying the landlord of her intention to do so. If she does, and the repairs ordered above are not made:

- 1) she may not, as set out above, deduct any amount from her monthly rent; and
- 2) the landlord may wait to start making repairs once the Emergency Order is rescinded, if access to the rental unit is necessary to make the repairs.

If the tenant revokes her consent to allow the landlord access to the rental unit to make the repairs, and the landlord waits until the Emergency Order is rescinded to start the repairs, the landlord must complete the repairs by the end of the calendar month following the month the Emergency Order is rescinded (for example, if the Emergency Order is rescinded in May 2020, the landlord must complete the repairs by the end of June 2020).

If the landlord fails to complete the repairs by this time, the tenant may make deductions from her monthly rent in the method specified above (10% for the first month, 20% for the second month, and so on).

Pursuant to section 72(1) and (2) of the Act, as the tenant has been successful in the application, she may deduct \$100, representing her filing fee, from her next month's rent. For clarity, this deduction will not cause the amount the tenant may deduct from her rent if the landlord fails to complete the above-ordered repairs.

### **Conclusion**

The tenant's application was partially successful. I order the landlord to repair the roof so that it does not leak water into the rental unit. I make no order regarding the clothes dryer. The tenant must serve the landlord with a copy of this decision as soon as possible upon receiving it.

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: April 2, 2020