



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, FF

### Introduction

This expedited hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons; and
- recovery of the filing fee.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The landlord confirmed receiving the tenant's evidence and the tenant confirmed receiving all but one page of the landlord's evidence. The landlord said that page was in the bulk evidence sent to the tenant.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters-

The evidence showed that the landlord has now served the tenant with a One Month Notice to End Tenancy for Cause (Notice). The tenant said she would be filing an application for dispute resolution to dispute the Notice.

During the hearing, the parties were advised that any evidence submitted for this hearing would not transfer to a subsequent application, meaning any evidence submitted in this matter which they considered relevant for a future application, has to be submitted separately.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make immediate repairs to the rental unit?

Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenant submitted copies of an original tenancy agreement and the current tenancy agreement. The tenancy originally began on June 1, 2017. The tenant said the rental unit was a single family dwelling, with a basement level, a main level and a third floor, occupied by the tenant and her children.

In support of her application for an order requiring the landlord to make emergency repairs, the tenant submitted that she contacted the landlord on June 25, 2020, about a suspected water leak and the landlord came the next day with a maintenance man. The maintenance man went through some diagnostics and by June 29<sup>th</sup>, the dishwasher was identified as the source of the leak. The tenant was instructed to turn off the water to the kitchen.

The tenant submitted that she believed the landlord contacted her insurance company, as a restoration company came to the rental unit on July 6, 2020, and gutted the kitchen, removing the flooring and cabinetry. As a result, according to the tenant, she has not had use of her main floor since July 6, 2020, and has not been able to cook meals for her three children. Instead, she has relied on meal delivery services, take-out and using the microwave. In support, the tenant submitted photos of the main floor.

The tenant submitted that the leak impacted the basement level and as a result, she had to move storage items to another location.

The tenant submitted that the landlord texted her on July 13 to ask if the work had been done and she informed the landlord it had been.

The tenant submitted that the landlord had received a payout from her insurance company and is now dragging her feet in getting contractors to the rental unit to perform the necessary repairs.

### **Landlord's response –**

The landlord submitted that she addressed the emergency repair the day after being informed of the water leak, although the tenant did not inform her of the water leak for several days after she noticed it, thinking it could have been the result of her children's actions. The landlord submitted that as the leak had been ongoing for several days, the water traveled down the wall to the basement and damaged the flooring in the basement as well.

The landlord submitted that when she attended the rental unit to investigate the leak, she opened the dishwasher door and saw large chunks of food in the unit, for which the tenant's oldest son apologized. According to the landlord, the tenant's oldest son said the younger children were responsible for loading the dishwasher.

The landlord submitted that she contacted her insurance company, who retained a restoration company to deal with immediate remediation work of the leak. The work included a floor demo, dishwasher removal, moisture readings, site protection, installation of equipment and a final inspection on July 10, 2020. The landlord submitted a copy of the restoration company's timeline.

The landlord submitted that it is very hard to get contractors at a time when people are not willing to enter other's homes and when the tenant has informed her that her own children are in quarantine. Additionally, the landlord submitted that she has learned the insurance companies go back and forth over several weeks before settling on an amount and work to be done.

The landlord submitted that she contacted the insurance on July 20, after hearing from the tenant on July 19, about the status of her claim, acknowledging that the tenant had been without her main floor for three weeks; however, she did not get a response until August 5. The agent for the insurance company said she had been waiting for the report from the adjuster dealing with the restoration company. The landlord was

informed that she was then approved for a settlement amount to take under consideration. At that point, she has contacted many contractors, providing the names and dates of contacts. The landlord submitted the contractors have other clients and the insurance company has other claims.

The landlord said that the earliest any contractor could start the work was mid-September, due to ongoing jobs, and the estimated scope of the work was 8 weeks.

The landlord said she has not settled with the insurance company or received a payout.

The landlord submitted that it was unfortunate the tenant did not have tenant's insurance, but the tenant needs to understand that there was a process to investigate the leak and to deal with the restoration company, the insurance company and the contractors.

The landlord submitted copies of the text message communication with the tenant, to keep her informed of the progress, text message communication with the maintenance man, communication with the restoration company, and written requests and responses to and from the insurance company.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 33 of the Act requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made for the purpose of repairing the following: major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit or the electrical system.

In the situation of a possible emergency repair to a rental unit, I find it the tenant's responsibility to notify the landlord of an issue dealing with an emergency request and a reasonable response from the landlord is to deal with the request promptly.

The evidence here shows that the tenant contacted the landlord about a potential water leak and the tenant herself confirmed that the landlord came to the rental unit the next

day with her maintenance man to investigate the leak. There was no dispute that the source of the water leak was the dishwasher.

While the issue may be ongoing, I cannot find this is the fault of the landlord. I accept the landlord's documentary evidence that she has been dealing with this issue consistently since being notified of the leak, with contacts and communications being made to the tenant, the insurance company for updates, the restoration company for reports, and contractors to obtain quotes. I therefore find any delays are not from the landlord's negligence or inattention to this repair, but simply from dealing with so many different parties and their schedules.

In a case such as this, when the tenant has lost the use of a portion of the rental unit due to such issues as a leak, a tenant's insurance policy generally covers expenses for damage to contents, storage, hotel, gas, moving, and food costs.

### Conclusion

As I have found that the landlord acted promptly in dealing with the emergency repair request from the tenant to the extent possible, I find that there is no basis for an order requiring the landlord to make emergency repairs. The landlord *is* dealing with the situation.

As a result, I dismiss the tenant's application for such an order, without leave to reapply.

As I have dismissed the tenant's application, I decline to award recovery of the filing fee.

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: August 21, 2020

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Residential Tenancy Branch