



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding YORKTOWN ENTERPRISES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

On August 24, 2020, the Tenant applied for a Dispute Resolution proceeding seeking an Emergency Repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance during the 26-minute hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with a Notice of Hearing and evidence package by placing it in the Landlord’s mailbox on August 25, 2020. He also submitted a signed proof of service form confirming service. Based on this and the Tenant’s undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing and evidence package in accordance with Sections 89 and 90 of the *Act*.

The Landlord did not submit any documentary evidence to the Residential Tenancy Branch for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair Order?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on June 1, 2020, that rent was established at \$1,350.00 per month, and that it was due on the first day of each month. A security deposit of \$675.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He advised that there are bedbugs in the rental unit and that he did not have these when he moved into the rental unit. He stated that they originated from another resident's property that was stored in the hall. He submitted that this falls under the emergency repair criteria of the *Act* as it is a serious health and safety issue. He stated that he cannot risk bringing these to work, that he cannot have people over, that he cannot sleep, and that he cannot have his son visit.

He provided some pictures of the bedbugs as documentary evidence as well as a letter dated August 17, 2020 advising the Landlord of the issue. He also warned the Landlord about this problem many times via text message and verbally. After threatening the Landlord with Arbitration, the Landlord sprayed the rental unit approximately four weeks ago. When that attempt was unsuccessful, he let the Landlord know, and the Landlord sprayed the rental unit again on September 28, 2020. As of the hearing, it was not known if this issue was rectified.

He also advised that the rental unit is infested with mice. He stated that the mice are eating his food, that they run across his dishes, and that they leave feces everywhere. He submitted that this falls under the emergency repair criteria of the *Act* as it is a serious health and safety issue because the mice are eating his food and contaminating it, which could be problematic if he happened to ingest or contract any diseases from the mice. His written and verbal requests to the Landlord included this issue as well, but the Landlord has done nothing to rectify it. He submitted a photo of mice droppings as documentary evidence.

Finally, he advised that the rental unit is heated by baseboard hot water heating; however, the thermostat has never worked, and he has not had any heat. While it has not been an issue to date, it will be once the weather gets colder. Apart from his testimony, he has provided no documentary evidence to support his position that the heat is not working. While his August 17, 2020 letter did not include this issue, the Landlord was advised of this problem. To date, the Landlord has not rectified it either.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 33 of the *Act* outlines the Landlord's and Tenant's duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

### **Emergency repairs**

- 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.

When reviewing the totality of the evidence before me, while there may be an issue with bed bugs in the rental unit, it appears as if the Landlord has taken steps to remedy this problem and it may have already been successfully treated by the date of this Decision. Furthermore, I acknowledge that if there are bed bugs, this would be an issue that the Landlord should rectify if the bed bugs were not present due to the Tenant's negligence. However, I do not find that the presence of bed bugs would meet the criteria of Section 33(c) of the *Act*.

Regarding the mouse infestation, I again acknowledge that if there are mice present, this would be an issue that the Landlord should rectify if the mice were not in the rental unit due to the Tenant's negligence. However, I do not find that the presence of mice would meet the criteria of Section 33(c) of the *Act*.

Finally, I am satisfied that the rental unit is primarily heated by baseboard hot water heating and that if this is not functioning at all, this would meet the criteria of being an emergency repair under the *Act*. However, other than his testimony, the Tenant has provided insufficient evidence to demonstrate that the primary heating system is not functioning.

As the burden of proof is on the Tenant to prove his claims, when reviewing the testimony and documentary evidence provided, I am not satisfied that the bed bug and mouse issues constitute an emergency repair. Furthermore, I am not satisfied that the Tenant has established that the heat is not working. As a result, I dismiss the Tenant's Application in its entirety.

As a caution to the Landlord, Section 32 of the *Act* requires that the Landlord provide and maintain a residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and makes it suitable for occupation by the Tenant. Should the Landlord not comply with the *Act* after a written request by the Tenant, the Tenant may make an Application for Dispute Resolution seeking an Order that the Landlord make the appropriate repairs. As well, the Tenant may seek that the Landlord compensate the Tenant accordingly for any loss suffered as a result of any breach of the *Act*.

As the Tenant was not successful in this Application, I do not find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I dismiss the Tenant's Application without leave to reapply.

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: September 30, 2020

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Residential Tenancy Branch