



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ERP, FF

### Introduction

On September 21, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following:

- for an order that the Landlord make emergency repairs to the rental unit.

The Director of the Residential Tenancy Branch has established the expedited hearing process in circumstances where there is an imminent danger to the health, safety, or security of a Landlord or Tenant.

The matter was scheduled for a teleconference hearing. The Tenant and the executor for the estate of the property owner (“the Landlord”) were present at the hearing. The Tenant and Landlord were assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties testified that they have exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The applicant uploaded two video files to the Residential Tenancy Branch case management system that are unable to be opened/ viewed. The files are either corrupt or in a digital format that is not supported. The two video files were not considered.

### Issue to be Decided

- Is the Tenant entitled to an order for the Landlord to make emergency repairs to the rental unit or residential property?

### Background and Evidence

The parties agreed that the most current tenancy agreement began in January 2018 as a two-year fixed term agreement. Rent in the amount of \$3,000.00 is due to be paid to the Landlord by the first day of each month. The Tenant provided a copy of the tenancy agreement.

The executor for the estate testified that the owner of the residential property died about one year ago.

### Emergency Repair

Counsel for the Tenant submitted that there is a problematic roof. Approximately six months ago the Tenant discovered a problem with the roof leaking.

The Tenant submitted that he reported his concerns with the roof to the executor of the estate. The Tenant made arrangements for a company to come to the rental property to look at the roof and complete a report. The Tenant submits that the report identifies three areas that are leaking. The Tenant submitted that the roof report was provided to the executor. The Tenant provided summarized emails or text communication sent to the Landlord between early July 2020 and mid August 2020. The Tenant provided 10 photographs of the interior and exterior of the rental unit and a copy of a roof inspection report dated July 6, 2020.

The roof inspection report includes the following information: Overall the existing roof system is in fair condition. Damaged shingles require replacement.

The Tenant submits that the leaks are causing black mold which is a serious health issue. The Tenant submits that the City came to inspect the rental unit last week.

In reply, counsel for the Landlord submitted that there is nothing in the report that mentions major leaks or black mold. Counsel submits that an emergency repair under section 33 of the Act relates to major leaks in pipes or the roof, not minor leaks.

Counsel for the Landlord submits that they are awaiting a copy of a report from the City.

Counsel for the Landlord submits that there is insufficient evidence from the Tenant to establish that an emergency repair is required. Counsel submits that there may be maintenance required; however, there is no emergency repair required and nothing affecting health and safety.

In reply, the Tenant provided testimony that there are water leaks in the office and Livingroom and black mold everywhere. When asked to quantify the amount of water leaking, the Tenant stated a couple of cups each day when it is raining.

### Electrical Panel

The Tenant testified that there was a power shut off at his suite. He testified that the power has gone off about 25 times. He testified that the other occupant living at the residential property flicks the electrical panel breakers off at night. He testified that the other occupant took the electrical panel off and caused a power surge. The Tenant stated that the fire department inspected and agreed.

In reply, the Landlord's counsel submitted that the fire department report makes no mention of an electrical panel issue.

The Landlord offered to have the electrical panel inspected within 30 days and share the result of the inspection with the Tenant.

### Analysis

Section 32 of the Act provides 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.*

Section 33 of the Act provides that "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.*

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The applicant bears the burden of proof that an emergency repair order is required. While I accept that the evidence before me establishes that the roof requires repair or replacement of a number of damaged or missing roof shingles, I find that there is insufficient evidence to establish that there is a major leak in the roof that requires urgent repair or is necessary for health and safety reasons. The Landlord refutes that there is evidence of a major leak. The roof report makes no finding that the roof has a major leak. The Tenant's photographs show some discolored areas; however, I find that the photos do not establish that there is a major water leak from the roof. There is no evidence before me that any mold present in the home is toxic or presents a health or safety risk.

I find that there is insufficient evidence that an emergency repair order is required. The Tenant's application for an emergency repair order for the roof is dismissed.

I note however, that the Landlord has an obligation under section 32 of the Act to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. It appears to me that the roof requires maintenance and repair. The Landlord is encouraged to make any necessary repairs.

I decline to order the Landlord to make repair under section 32 of the Act. This expedited hearing for an emergency repair does not permit me to consider any other claims or permit an amendment to the claim. I can only consider the request to order the Landlord to make an emergency repair.

On the issue of the electrical panel, I find that the fire department report makes no mention of an electrical panel issue. I find that the concern the Tenant is having with the electrical service is more likely related to the actions of the other occupant who reportedly flicks the breakers off at night.

I find that there is insufficient evidence that an emergency repair order for the electrical system is required. The Tenants application for an emergency repair order for the electrical system is dismissed.

I note that the Landlord has offered to have the electrical panel inspected within 30 days and share the results of the inspection with the Tenant.

### Conclusion

The Tenant's application for an order for the Landlord to make emergency repairs to the residential property is dismissed.

The Tenant is at liberty to apply for dispute resolution seeking a repair order under section 32 of the Act.

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: October 14, 2020

---

Residential Tenancy Branch