



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Emergency repairs to the rental unit pursuant to section 33 of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's Advocate, and the Tenant's support person, all of whom provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant and their Advocate were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were sent to the Landlord by registered mail on December 16, 2020, at the address for service for the Landlord listed on the most recent Notice of Rent Increase they received from the Landlord, dated April 30, 2019. The Tenant provided me with the address used for the Landlord and the registered mail tracking number, which have both been recorded on the cover page for this decision, and a copy of the Notice of Rent Increase, which has a service address for the Landlord which matches that provided to me by the Tenant during the hearing. The Tenant stated that although there is a different service address for the Landlord listed in the written tenancy

agreement, the tenancy agreement is old and the Landlord has since moved, which is why they used the updated service address listed for the Landlord on the Notice of Rent Increase. The Tenant also testified that no other service address has been given to them by the Landlord since the Notice of Rent Increase dated April 30, 2019, was served on them.

Canada Post tracking information shows that the registered mail was sent as described above on December 16, 2020, and that it was delivered on December 18, 2020. There is also no indication by Canada Post that the item was refused, that the recipient could not be located at that address, or that it had been returned to sender. As a result, I find that the Landlord was served with the documentary evidence before me from the Tenant and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, on December 18, 2020. Further to this, I verified that the hearing information contained in the Notice of Dispute Resolution Proceeding was correct, and note that the Tenant had no difficulty attending the hearing on time, using this information.

Based on the above, and as no one appeared on behalf of the Landlord to make any arguments with regards to service of the above noted documents, I accepted all of the documentary evidence before me from the Tenant for consideration and the hearing proceeded as scheduled despite the absence of the Landlord or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

Although the Tenant submitted an immense amount of documentary evidence for my consideration, I refer only to the facts, evidence and issues in this decision which were determined by me to be relevant and determinative.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

### Preliminary Matters

#### Preliminary Matter #1

During the hearing the Tenant's Advocate stated that the Tenant wants the following things as a result of the Application:

- An order that the rental unit is uninhabitable;
- The ability to give less than 30 days written notice to end the tenancy;
- An order that they have until at least February 28, 2021, to vacate the rental unit;

- An order that the Landlord pay for a Hazmat team to remove and assess some of the Tenant's personal possessions which have been contaminated by mould;
- An order that the Landlord stop disturbing them; and
- Some sort of order preventing the Landlord from providing prospective landlords of the Tenant with a poor reference for the Tenant, which the Tenant considers slander.

I advised the Tenant and the Tenant's advocate that pursuant to rule 6.2 of the Rules of Procedure, the hearing is limited to matters claimed in the Application unless the Arbitrator allows the party to amend their Application. As no amendment seeking the above was filed with the Branch by the Tenant or served on the Landlord, and I do not find that the above noted claims could reasonably have been anticipated by the respondent based on the Application, I declined to amend the Application at the hearing to include the above noted claims under rule 4.2 of the Rules of Procedure. The hearing therefore proceeded based on the matters claimed by the Tenant in the Application.

#### Preliminary Matter #2

In their Application the Tenant sought an order for the Landlord to deal with mould in the rental unit. I advised the Tenant at the outset of the hearing that although mould issues may be urgent, and their remediation may be necessary for the health or safety of anyone or for the preservation or use of residential property, in order for something to qualify as an emergency repair under section 33 of the Act, in addition to the above, it must also be 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.

I advised the Tenant that general mould issues in the rental unit do not meet any of the requirements set out under section 33(c) of the Act or Schedule 8(3)(d) of the Regulation, for consideration as emergency repairs and that as no prescribed circumstances have been set out in the Act or the Regulation with regards to

emergency repairs to a rental unit or residential property, I do not find that section 33(c)(vi) of the Act applies to mould.

I note that the Tenant was advised by phone by an information officer with the Residential Tenancy Branch (the Branch) on December 4, 2020, that mould issues typically fall under section 32 of the Act, not section 33, and that the Tenant opted to proceed with their section 33 Application as filed, without seeking an amendment to add a request for repairs under section 32 of the Act.

As I do not find that general mould issues in the rental unit qualify as emergency repairs pursuant to section 33 of the Act, I advised the Tenant to restrict their testimony in the hearing to repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and relate to 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 a rental unit, and/or the electrical systems.

#### Issue(s) to be Decided

Is the Tenant entitled to an order that the Landlord complete emergency repairs to the rental unit pursuant to section 33 of the Act?

Is the Tenant entitled to recovery of the filing fee for the Application?

#### Background and Evidence

The Tenant stated that a residential tenancy under the Act exists and that currently rent in the amount of \$1,545.70 is due on the first day of each month.

The Tenant stated that they are looking for the Landlord to complete emergency repairs to the electrical system, the main heating system, the roof and/or the water drainage/water runoff systems for the roof, the front door and front door locks, and the kitchen faucet.

The Tenant stated that there are significant issues with the electrical system of the rental unit, which are cause for serious safety concerns to themselves and which pose a very real fire risk to the rental unit. The Tenant stated that various electrical outlets and fixtures do not work, that there are burning smells and burnt wiring, and that persons hired by the Landlord to complete electrical work at the rental unit in the past have

found it difficult or impossible to locate or repair these issues. The Tenant stated that BC Hydro has been involved and has significant concerns regarding electrical issues at the property, and they have been advised more than once by persons hired by the Landlord to complete electrical work, that a full re-wiring of the property is likely required. The Tenant submitted substantial documentary evidence in support of this claim, such as videos, photographs of burnt wiring and outlets, and documentation from BC Hydro.

As a result of the above, the Tenant requested that a professional electrician, other than those previously hired by the Landlord and named on the cover page for this decision, or a person from the relevant health and safety authority, attend the property to assess the electrical system and complete any necessary repairs.

The Tenant stated that although the main heating system of the rental unit functions, it does not appear to function correctly as the rental unit is always cold and that in any event, it cannot continue to be used for health and safety reasons as there is a rodent infestation resulting in rodent excrement in the forced-air system and that there was an overspray of ceiling material into the heating vents, which poses a very serious health hazard as the ceiling material contains asbestos. The Tenant argued that although the presence of the asbestos material itself does not pose an issue, if disturbed, say by airflow or rodent activity, or if heated, say by hot from the furnace, it can pose very serious health risks. The Tenant submitted significant documentary evidence in support of this claim, such as photographs and a hazmat report for the property.

As a result, the Tenant requested that professional attend the property to assess what repairs and maintenance are required to the heating system, and complete any necessary repairs and maintenance. They also requested that a qualified asbestos abatement professional remove any of the asbestos containing ceiling material in the air ducts and vents.

The Tenant stated that they believe there may be a leak in the roof or issues with the water drainage/water runoff system for the roof, or the lack thereof, as drywall on the main floor is damp. The Tenant stated that when it rains, water can be seen pouring off the roof improperly, and can be heard draining down downspouts for days afterwards. The Tenant stated that either a roof leak or improperly functioning water drainage/water runoff system for the roof, or both, are causing water ingress issues which are in turn causing mould and electrical issues. The Tenant also stated that the Landlord has previously been ordered by the Branch to deal with the mould in the past. The Tenant pointed me to a text message and photographs in support of this testimony.

When asked, the Tenant acknowledged that they do not know if there is in fact a roof leak, and that they cannot see water dripping or leaking into the rental unit from the roof. The Tenant requested that professional roofers and/or drainage specialists attend the property to assess the roof and roof drains, and complete any necessary repairs.

The Tenant stated that due to settling of the house over time, the front door sometimes sticks, and they have difficulty opening and closing the front door locks. The Tenant stated that sometimes the door and or the locks stick so significantly that they cannot be opened, and then they have to use an alternate entrance to the property. As a result, the Tenant requested that the front door and/or the front door locks be repaired or replaced so that they function properly.

Finally, the Tenant stated that the kitchen faucet and taps do not function properly, as they must be physically held down in order to allow water to flow out of the faucet and that the taps are broken off such that the screw or bolt which held the tap must be physically turned in order to turn the tap on. The Tenant also stated that there is a gap between the sink and the counter. As a result, the Tenant sought an order that the faucet and taps be replaced.

No one appeared on behalf of the Landlord to provide any evidence or testimony for my consideration, despite my finding earlier in this decision that they were properly served with the documentary evidence before me from the Tenant, a copy of the Application, and notice of the hearing by registered mail on December 18, 2020.

### Analysis

Based on the uncontested documentary evidence and affirmed testimony before me for consideration from the Tenant, I find that a residential tenancy under the Act exists between the Tenant and the Landlord named as the respondent in the Application.

Section 33 of the Act states that emergency repairs are repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and 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.

Schedule 8(3)(d) of the Regulation states that Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to 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, or
- (v)the electrical systems.

The Tenant provided affirmed testimony during the hearing that there are significant issues with the electrical system of the rental unit, which are cause for serious safety concerns to themselves and which pose a very real fire risk to the rental unit and submitted substantial documentary evidence in support of this claim. Based on the undisputed and affirmed testimony of the Tenant in the hearing and the documentary evidence submitted by the Tenant, I am satisfied that emergency repairs pursuant to section 33(c)(v) of the Act are required.

During the hearing the Tenant requested that several persons hired by the Landlord in the past to complete electrical work not be used for any electrical repairs, as they stated that repairs completed by them in the past have been deficient and they are not satisfied that these persons are qualified to complete this work. The names of these individuals, to the best of the Tenant's knowledge were provided by the Tenant during the hearing and have been recorded on the cover page for this decision. As a result, I order that any assessments or repairs required as a result of this decision in relation to the electrical system, not be completed by these individuals. The Tenant also requested that someone other than a general electrician complete any necessary assessments and repairs to the electrical system, however, they submitted no documentary evidence to establish what person, organization, or governing authority would be responsible for such assessments and repairs, if not an electrician. As a result, I have not ordered

anyone other than a qualified electrician in good standing in the community to complete any necessary assessments and repairs to the electrical system of the rental unit.

Based on the above, I grant the following orders:

- I order the Landlord to, as soon as possible and not later than 30 days after the date of this decision, and after having given the Tenant proper notice of entry pursuant to section 29 of the Act, have the electrical system of the rental unit inspected by a qualified electrician in good standing in the community, other than the persons I have explicitly excluded in this decision, to determine whether it complies with the health, safety and housing standards required by law and to assess what repairs are required to address the electrical issues set out above.
- I order the Landlord or the person hired by them as set out above, to provide the Tenant with proof that the person hired to complete the above noted inspection is qualified to do so by the governing authority, and that this be provided to the Tenant before or at the time of the inspection.
- I order that as soon as possible, and not later than seven days after the date of the inspection, the Landlord or the person hired by the Landlord to complete the above noted inspection, provide to the Tenant in writing a report or assessment authored by the qualified electrician who completed the inspection, which details whether the electrical system for the rental unit complies with the health, safety and housing standards required by law and details what repairs are required to address the electrical issues.
- I order that any necessary repairs to the electrical system of the rental unit as set out in the above noted report or assessment be completed as soon as possible, and not later than three months after the date of the inspection, unless there is written documentation from a qualified electrician in good standing in the community, other than those explicitly excluded by me in this decision, that such repairs cannot reasonably be completed within this timeframe due to the nature and extent of the repairs required. In such a case, the Landlord must then complete these repairs as soon as possible, given the nature and extent of the repairs required. If more than three months is required, written documentation from a qualified electrician in good standing in the community, other than those persons explicitly excluded by me in this decision, must be provided to the Tenant as soon as possible and must establish what alternate timeframe is reasonable and practical, given the nature and extent of the repairs required.

Although the Tenant sought emergency repairs to the roof and/or the drainage/water runoff system for the roof, during the hearing they stated that they could not be certain that there was a roof leak at all or what size of a roof leak there was, if any. Although



the Tenant suspects that either a roof leak or issues with the drainage/water runoff system for the roof is causing moisture in some drywall, no testimony or documentary evidence was submitted by the Tenant to satisfy me on a balance of probabilities that there is a leak in the roof, let alone a major leak in the roof that would necessitate emergency repairs pursuant to section 33 of the Act. Further to this, I do not find that section 33 of the Act applies to roof drainage/water runoff systems, as they are not included under section 33(c) of the Act or Schedule 8(3)(d) of the Regulation. As a result, I dismiss the Tenant's claim for emergency repairs to the roof and/or the roof drainage/water runoff system. The Tenant remains at liberty to seek repairs to the roof and/or roof drainage/water runoff systems, if required, under section 32(1) of the Act, or to seek emergency repairs to the roof in the future, should a major leak in the roof meeting the requirements set out under section 33 of the Act, occur.

I find as fact based on the Tenant's undisputed and affirmed testimony in the hearing that the kitchen faucet is damaged, that it does not function unless it is physically held in place, and that the tap to turn it on is broken. I find that a damaged kitchen faucet qualifies as a damaged plumbing fixture under section 33(c)(ii) of the Act, and that emergency repairs are therefore required to it as I find that the lack of adequate running water in the kitchen of a rental unit is an urgent issue that requires immediate resolution for the health of the occupants. As a result, issue the following order:

- I order the Landlord to, as soon as possible, and not later than two weeks after the date of this decision, and after having given the Tenant proper notice of entry pursuant to section 29 of the Act, have the kitchen faucet and taps, and any other necessary and associated fixtures (such as gaskets), replaced with ones that functions properly.

I also find as fact that the front door and front door lock are damaged or defective, or both, and given the significant safety risk posed to the Tenant and their possessions by defective doors and locks which give access to the rental unit, I find that emergency repairs are required to the front door and the front door locks pursuant to section 33(c)(iv) of the Act. As a result, I issue the following order:

- I order the Landlord to, as soon as possible and not later than two weeks after the date of this decision, and after having given the Tenant proper notice of entry pursuant to section 29 of the Act, have the front door and the front door locks repaired or replaced so that the function properly and can easily be opened and closed without sticking. If the Landlord replaces the locks, I order them to immediately give the Tenant a copy of the new keys.

Finally, based on the uncontested documentary evidence and affirmed testimony before me from the Tenant, I am satisfied on a balance of probabilities that the main heating system for the rental unit does not function correctly. I am also concerned, given the hazmat assessment submitted by the Tenant, that overspray of asbestos containing ceiling material in the heat vents/ducts may pose a serious safety risk to the Tenant and any other occupants of the property if it is disturbed by the rodent activity at the property or if it is heated. As a result, I find that emergency repairs are required to the main heating system, including the areas of the heating vents/ducts impacted by the overspray of asbestos containing ceiling material, pursuant to section 33(c)(iii) of the Act. As a result, I make the following orders:

- I order the Landlord to, as soon as possible and not later than 30 days after the date of this decision, and after having given the Tenant proper notice of entry pursuant to section 29 of the Act, have the main heating system of the rental unit inspected by a qualified professional standing in the community to determine if it is functioning correctly and to determine what repairs and maintenance are required.
- I order the Landlord or the person hired by them as set out above, to provide the Tenant with proof that the person hired to complete the above noted inspection is qualified to do so by the governing authority, and that this be provided to the Tenant before or at the time of the inspection.
- I order that as soon as possible, and not later than seven days after the date of the inspection, the Landlord or the person hired by the Landlord to complete the above noted inspection, provide to the Tenant in writing a report or assessment authored by the qualified professional who completed the inspection, which details whether the main heating system for the rental unit is functioning correctly and details what repairs and/or maintenance is required.
- I order that any necessary repairs or maintenance to the main heating system of the rental unit as set out in the above noted report or assessment be completed as soon as possible, and not later than three 30 days after the date of the inspection, unless there is written documentation from a qualified professional in good standing in the community, other than those explicitly excluded by me in this decision, that such repairs cannot reasonably be completed within this timeframe due to the nature and extent of the repairs required. In such a case, the Landlord must then complete these repairs as soon as possible, given the nature and extent of the repairs required. If more than 30 days is required for the completion of the repairs or maintenance, written documentation from a qualified professional in good standing in the community, other than those persons explicitly excluded by me in this decision, must be provided to the Tenant as

soon as possible and must establish what alternate timeframe is reasonable and practical, given the nature and extent of the repairs and/or maintenance required.

- I also order the Landlord to, as soon as possible and not later than 30 days after the date of this decision, and after having given the Tenant proper notice of entry pursuant to section 29 of the Act, have any asbestos containing material in the heat vents or ducts removed by a qualified asbestos abatement professional in good standing in the community, unless there is written documentation from a qualified asbestos professional in good standing in the community, that such work cannot reasonably be completed within this timeframe due to the nature and extent of the abatement required. In such a case, the Landlord must then have this abatement completed as soon as possible, given the nature and extent of the abatement required. If more than 30 days is required for the completion of the abatement, written documentation from a qualified abatement professional in good standing in the community must be provided to the Tenant as soon as possible and must establish what alternate timeframe is reasonable and practical, given the nature and extent of the abatement required.
- I order the Landlord or the person hired by them as set out above, to provide the Tenant with proof that the person hired to complete the above noted asbestos abatement is qualified to do so by the governing authority, and that this be provided to the Tenant before or at the time of the entry for the purpose of asbestos abatement.

As the Tenant was successful in the majority of their Application, I grant them recovery of their \$100.00 filing fee pursuant to section 72(1) of the Act. The Tenant may deduct this amount from the next months rent payable under the tenancy agreement pursuant to section 72(2)(a) of the Act, or serve and enforce the attached Monetary Order issued by me pursuant to section 67 of the Act, but not both.

Should the Landlord fail to comply with the above noted orders, the Tenant may seek monetary compensation from the Landlord for any loss of use or loss of quiet enjoyment suffered as a result of the Landlord's failure to comply with the above noted orders. The Landlord is also cautioned that failure to comply with the Act, regulations, or this decision and orders may result in administrative penalties of up to \$5,000.00 per day of non-compliance, pursuant to section 87.4 of the Act.

### Conclusion

I grant the Tenant's Application seeking emergency repairs to the electrical system, the main heating system of the rental unit, the front door and front door locks, and the

kitchen faucet and taps and I order the Landlord to comply with the repair orders set out by me in this decision. The Tenant's Application seeking emergency repairs to the roof and or the water drainage/water runoff systems for the roof is dismissed.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$100.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

In lieu of serving and enforcing the above noted Monetary Order, the Tenant is authorized to deduct \$100.00 in one lump-sum from the next month's rent payable under the tenancy agreement, pursuant to section 72(2)(a) of the Act, should they wish to do so.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 13, 2021

---

Residential Tenancy Branch