



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

On March 24, 2021, 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 attend at any point during the 31-minute teleconference. At the outset of the hearing, I explained to the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. The Tenant acknowledged these terms. As well, the Tenant provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing and evidence package to the Landlord by posting it to his door on March 30, 2021, and proof of service was submitted to confirm service of this package. However, she stated that her video evidence was not served to the Landlord. In accordance with the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was deemed to have received the Notice of Hearing and evidence package three days after it was posted. As such, I have accepted this evidence and will consider it when rendering this Decision. However, as the video evidence was not served to the Landlord, this will be excluded and will not be considered when rendering this Decision.

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 November 1, 2017, that rent was currently established at \$2,075.00 per month, and that it was due on the first day of each month. She stated that a security deposit of \$975.00 was paid despite this not being indicated on the tenancy agreement. A copy of the tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that since the start of the tenancy, there has been a leak from her ceiling due to a balcony that is disintegrating. Over the years, water has seeped in through the second bedroom ceiling and nothing was done by the Landlord to correct this issue. In November 2020, there was another leak and the Tenant informed the Landlord. A professional roofing company was already doing work on the property and they determined that the roof and deck required being rebuilt entirely to fix the leak into the rental unit. The Landlord refused this suggestion and had this company put a tarp on the roof. This only caused the situation to worsen.

Between January 16, 2021 and February 7, 2021, she was given permission by the Landlord to seek out quotes to complete the necessary repairs. She received several quotes and every company suggested that the roof and deck required being rebuilt as the roof was over 30 years old and was the source of the leak. The Landlord has refused to undertake any of the repairs to the roof or deck.

During a rainstorm in March 2021, she stated that water has leaked from her ceiling through a light fixture, and into the rental unit. An electrician determined that no electrical repairs could be made until the roof and deck repairs were completed. She submitted pictures, as documentary evidence, to demonstrate the extent of the leak issue and she referenced documents provided to the Landlord informing him of the

issues. However, she did not submit any evidence of the quotes from contractors demonstrating the extent or cost of the necessary repairs.

### 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 32 of the *Act* requires that the Landlord provide and 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.”

Section 33 of the *Act* outlines the Landlord’s and Tenant’s duties when an emergency repair is required.

### **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.
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;

- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

While the Tenant has submitted no documentary evidence, from qualified professionals, to support her claims that the roof and deck are in a state of disrepair and are the source of the leak, I am satisfied from the undisputed evidence that there is in fact a leak in the Tenant's ceiling of her rental unit and that it has been ongoing for a significant period of time. Based on the undisputed evidence provided, I am satisfied that this leak issue would fall under the emergency repair Section of the *Act*. I am also satisfied that the Landlord has been aware of this issue for a significant period of time and has failed to take the necessary steps to remedy this situation in a timely manner, as is his responsibility as a Landlord.

As it is the Landlord's responsibility to maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, I find that he is responsible for rectifying this emergency repair issue. As the Landlord has been aware of this ongoing issue for such a significant period of time, I **Order** the Landlord to hire a qualified professional to investigate and assess the nature of the leak within a week of being deemed to receive this Decision.

I further **Order** that the Landlord have the necessary repairs commence, by a qualified professional, within a week of receiving the assessment of the required repairs. As a note, the Tenant may serve a copy of this Decision to the Landlord in a manner in accordance with the *Act* to expedite receipt of this Decision, and consequently the start of the emergency repair Order.

The Landlord is cautioned that failure to comply with the above noted **Orders** could lead to justification in a Tenant's Application for compensation.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the filing fee in the amount of \$100.00, which she may deduct from the next month's rent or otherwise recover from the Landlord.

Conclusion

I **Order** that the Landlord complete the following actions:

- As soon as is reasonably possible, and within a week of being deemed to have received this Decision, the Landlord must hire a qualified professional to investigate and assess the nature of the leak in the roof and/or deck.
- As soon as is reasonably possible, and within a week of receiving the qualified professional's recommendation for repairing the leak in the roof and/or deck, the Landlord must have the necessary repairs commence. These repairs must be fully completed within a reasonable period of time after the work commences.

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 23, 2021

---

Residential Tenancy Branch