



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes    ERP, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order for emergency repairs, and to recover the \$100.00 cost of their Application filing fee.

The Tenant, A.D., and an agent for the Landlord, A.R. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application; they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Should the Landlord be ordered to make emergency repairs, and if so, which ones?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the fixed term tenancy began on July 1, 2021, with a monthly rent of \$1,550.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$775.00, and no pet damage deposit. The Agent said that the residential property is approximately 40 years old, and that it was last renovated with new flooring, appliances and paint about four or five years ago.

In the hearing, the Tenant explained their claim as follows:

I am seeking the replacement of the windows, because they are 40-year-old windows that can't be repaired. The sliding door in the living room, and windows in two of the bedrooms let in cold air. It's freezing cold in the bedrooms. I have a toddler whose bed is quite close to the window. My bed is one meter away from the window. I felt cold air on my shoulders while sleeping. There is ice on the inside of the window frames.

The Agent said:

During the cold weather in December when temperatures were going down, it was extremely cold. The Tenant said that all the windows had frost inside the unit; I came and saw that it was true.

The next day we covered the windows with a special sealing film, and we lent them an extension cord, so they could plug their heater in to the outlet in the hallway. Then they do not have to pay for electricity for the heater. We did provide them with an emergency repair. We did everything that they could feel

comfortable to stay in the apartment.

We will replace the windows, but it will take time. We needed to find a contractor, get an estimate and quotes, and put the purchase order in the system. It was taking two weeks to find a company who will do it. It's not a very fast process.

All three windows will be replaced. I have a purchase order for this job. The company said it will be done in the next one to three months. That's because of the window production – it's a special order.

When I asked the Landlord how she chose this company, she said:

I googled many of them and the Tenants know how many times, with the number of times we were coming to his unit with different contractors. Some didn't do it, some called back, because they can't do the job because of short staff of people due to Covid. Some told me that it will take three to six months to do this job, which also did not comply with our requirements. Only one company said they will do this job and they said one to three months.

I asked the Tenant if the films applied to the windows helped, and he said:

Not in my bedroom – the window is huge, and the film ended up on floor, and in my daughter's bedroom, we removed it, because estimators had to come in. They were not putting it back, and there's not enough time for me to do it. So, the temporary repairs with the cord, which is plugged into the outlet in the hall works, but there's only one heater – it's tiny - not powerful enough to heat up the square footage. . . . it takes up to one hour to heat up a room. It's a fire hazard to leave on in the night, so we wake up to a cold hallway every morning. The repairs have not been really helpful.

In answer to what he thinks about new windows having been ordered, the Tenant said:

It's good to hear that it has been placed, but I am convinced that if the Landlord would pay more, they could have replaced the window quite sooner. I do not believe there is no contractor that would do anything much faster. When asking for the mould removal, [the Agent's] substitute-manager said there's no one to do the job, but I found two or three companies that would do that.... I understand how they're trying to deviate from responsibility. The window issue should have been done right away.

I asked the Tenant what he wanted the Landlord to do at this point, and he said:

I will apply for reimbursement of the rent for retroactively for the tenancy here, because I believe that the improper conditions were misrepresented on a legal document. These windows not sealing, the condensation is there, the surface is super cold. It's normal that condensation happens and creates mould - a health hazard. We've been living with the mould for quite a while in here.

The Tenant that the other heat source for the residential property is a fire place, but the Tenant said that wood is too expensive to use that.

The Landlord said that she could loan the Tenant more space heaters, which the Tenant initially said would be noisy, but ultimately, he indicated that he would like another space heater from the Landlord. I encourage the Parties to contact each other in this regard.

The Agent also said she would send a maintenance person to cover the windows with the film again, if the Tenant wished. The Tenant said that the maintenance person would have to come every day to reapply the film, because the Tenants open their windows every day for fresh air.

The Agent said:

I don't know what to say. We did provide – we did everything that we could, right. The windows will be replaced. I offer the heaters and he doesn't like it. It's a water heater, so it's not dry air in the room.

On the pictures, you can see in November the window leak and mould, We sent right away the cleaner. I cannot tell you because I was on vacation. I can't tell exactly when the cleaner arrived - the next day or two to three days later, but the cleaners came. She used a bleach solution: one part bleach to ten parts water – a special solution to remove the mould from the windows. There was no mould on the frame. We did everything that we could. After that, I didn't hear any complaint until December 29<sup>th</sup>, when he said frost formed inside.

The Tenant said:

I would like to interject and say the janitor later came in five business days from the initial complaint about mould. She did use [a disinfectant] . . . not a special solution. If I took more pictures of window sills - there's still mould from improper

insulation. The problem of mould is still there. The services and aid provided was not been sufficient to enjoy the rent in this unit.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 33 of the Act sets out what “emergency repairs” means. It says that emergency repairs are “urgent, necessary for the health or safety of anyone or for the preservation or use of residential property.” The Act also states that emergency repairs are 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.

Technically, this is not an “emergency” repair as defined by section 33 of the Act, as the leaks in the rental unit are not “major leaks in pipes or the roof”. As such, the Tenants received an expedited or earlier hearing than other people seeking non-emergency repairs.

Section 32 of the Act requires a landlord to maintain the rental unit 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, which make it suitable for occupation by the tenant. However, section 32 also states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find in this set of circumstances, that the Landlord has done everything reasonable to resolve the primary maintenance issues that the Tenants have raised about the rental unit. The Landlord took immediate action to have a special sealing film applied to the windows; I find they also sent someone in to clean the mould in a reasonable amount of time. However, the Tenant said that he breaks the film seal every morning in order to

allow fresh air into each room. The Tenant requested that the Landlord send someone every morning to reapply the film seal. I find this to be an unreasonable expectation on the Tenant's part. It is the Tenant who insists on breaking the seals every morning, and who asserts that he is too busy parenting a toddler to reapply the seals, himself each day. However, while the Tenant has rights under the Act, he also has obligations. The Tenant should be cleaning the mould before it builds up too much, as part of his obligations pursuant to section 32 of the Act. I find that it would be reasonable to expect the Tenant to reapply the film seals to the windows, after being shown how to do this by the Landlord's maintenance staff.

The windows have been ordered and will arrive and be installed as soon as possible. The Tenant has been offered other solutions to assist him in staying comfortable, such as being loaned another space heater by the Landlord, which the Tenant initially rejected because of the potential noise.

Further, the Tenant rented the unit, knowing that the primary heating source was a wood fire place; however, the Tenant said it is too expensive to buy a bundle or a cord of wood to fuel the fire. I find this choice of a rental unit, given the Tenant's financial constraints may have been imprudent.

When I consider the evidence before me overall, I find that the Landlord has complied with their obligations under the Act in this situation; I find that the Tenant's claim is without merit.

I, therefore, dismiss the Tenant's Application wholly without leave to reapply, pursuant to section 62 of the Act..

I find that if the Tenant participated in resolving the matter, and being more open to the Landlord's proposals, then the rental unit would be more comfortable for him and his family sooner.

### Conclusion

The Tenant is unsuccessful in his Application, as the Landlord's Agent demonstrated that the Landlord has already taken appropriate, remedial actions to assist the Tenant in this situation. The Tenant's Application is dismissed without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: February 08, 2022

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Residential Tenancy Branch