



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, FF

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons and to recover the cost of the filing fee.

The tenants, the landlord, and the landlord's witnesses attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenants' evidence. The landlord said they did not serve the tenants with their evidence as required by the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). As a result, the landlord's documentary evidence was excluded, but the landlord and witnesses provided their oral evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to make emergency repairs to the rental unit for health and safety reasons?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy began in April 2017 and monthly rent is \$750.

The testimony taken showed that there were two rental units in question, side-by-side duplexes, with tenants VH and AK living in the 1-bedroom side and tenant, DO, who was not present, living in the 2-bedroom side.

The landlord is the aunt of tenant VH, and DO is the landlord's sister. The residential property is on land owned by the landlord which also has other structures.

In support of their application for an order requiring the landlord to make emergency repairs, the tenants stated in their application the following:

*New roof on house is offgassing into our units. Roofers left 27year old tar paper, dead bats and bat droppings on roof, sealed it with plastic and metal roof and vented incorrectly. On hot days we and pets are sick. L/I has been contacted by phone almost daily from Jun 25-Jul31st.Landlord and roofing company has made no effort to come and smell, and they are ignoring our pleas. Our concern and complaining has led landlord to now harrass, verbally abuse, intimidate and threaten. We feel helpless*

[Reproduced as written]

The tenant, VH, testified that the only matter at issue in this dispute is the venting in the new roof over the rental units, the work for which began in June 2022.

The tenant said that the new roof over the two suites was not done correctly and as a result, the offgassing has caused the three tenants and their pets to become sick from the smell. The tenant said that they notified the landlord that the work was done improperly, but the landlord would not respond. The tenant submitted that she was only

looking out for her aunt, as she believed the roofing contractor was taking advantage. The tenant said she implored her aunt not to pay the contractor's bill.

According to the tenant, the landlord would not come into the rental unit to smell the odours.

The tenant said that the new roofing was not properly ventilated, as the ridge vent that was installed did not solve the problem. According to the tenant, during the 3 heatwaves during the summer, they had to sleep downstairs because of the smells.

In a written statement, the tenant submitted that once the "cedar shakes" came off the roof, they found many dead bats, feces and urine stained rotten roofing tar paper. However, the contractor did not replace the tar paper, and only sealed it off with a plastic like membrane and metal roofing on top. This caused them and their pets to become sick. The tenant wrote that as they were being exposed to a toxic substance, they were told by Healthlink BC, Island Health to leave.

The tenant confirmed that the smell is not as bad currently.

The tenant said they contacted the roofing contractor and asked them to do their job. Additionally, the tenant sent a letter to the roofing company. The letter was filed in evidence.

The letter explained the timeline of their events as to the roofing and listed the deficiencies in the work. The letter indicated that the roofers had to bang in all the nails from old cedar shakes, dislodging the bat droppings and broken tar paper into the insulation. Additionally, the tenant wrote, "Air passes through fiberglass insulation. Insulation slows heat transfer- NOT AIRFLOW". The tenant reaffirmed their belief that the job was not done correctly.

Additional filed relevant evidence by the tenants included a written statement from AK.

In response, the landlord said what the tenants are doing is senior abuse as they have been bothering her all summer. The landlord said she did not appreciate the tenants treating her like this and they are causing her stress, which is leading to higher blood pressure.

The landlord said she has faith in the roofing contractor and believes the tenants are overstepping. The landlord said she went with her witness, CR, and they took pictures of the skylights.

The landlord's witness, RB, is the owner of the roofing company. RB said he has owned the business for 35 years and has multiple crews working for the company. RB said his company uses "best practices" and has A+ ratings with the BBB and contractor's association. RB said they have had 0 complaints made against the company in 35 years.

In that regard, RB said all the work performed on this roof, such as venting and tar paper, was according to best practices and was to code.

RB testified that he had to go on the internet to find out what offgassing was and discovered it occurs only from an external heat source, which does not include the sun.

RB testified further about proper venting as to roof size, proper placement or use of soffits and eavestroughs. RB said they usually go over what is required by code.

RB said they do not use any kind of chemicals in their roofing.

The landlord's witness, CR, testified next. CR said she entered the house and foyer and was overwhelmed by the cigarette smoke. However, in the rental unit, she said she did not smell anything of which the tenants were complaining. CR said she went upstairs on August 17, 2022 at 1:00 pm and smelled nothing. CR said there was no way the landlord could climb the steep stairs to inspect the upstairs, due to mobility issues.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The tenants bear the responsibility to prove their claim on the balance of probabilities.

As defined by section 33 of the Act, emergency repairs are urgent, 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.*

*[My emphasis]*

In this case, the tenant stated that the issue in this application was venting. I do not find venting falls under section 33(c) of the Act as defined. I therefore find the alleged repairs needed were not urgent or an emergency.

Although I have found that the issue of venting is not an urgent or emergency repair under the Act, I also addressed whether the matters of venting, offgassing and toxic fumes or air quality raised by the tenants were more in the way of a repair so that the rental unit complies with health, safety, or housing standards required by law, under section 32 of the Act.

While the tenants claim the new roof was offgassing and that the air was toxic, making the occupants sick, the tenants failed to provide any proof of the same, such as with an air quality test or medical records. The tenants provided written statements, one from NF. This statement was not signed or verified at the hearing by testimony. Another statement from MR was also not signed or verified, but was in the exact format as the statement from NF. Another submission filed by the tenants was called a statement, but was in fact a text message. I do not find these unsigned statements and text messages are sufficient to prove the claims of the tenants.

While the tenants claim the roof was improperly vented, I find the tenants submitted insufficient evidence this was the case. The landlord's witness was a roofing company owner for 35 years, and provided his professional opinion at the hearing. If the tenants claim improper roofing, it is on the tenants to prove through evidence that it was not. For instance, the tenants did not provide a report or have testimony from another roofing company who could say otherwise that the roof was done improperly. I do not find the tenants' statement, absent credentials, to prove the roofing was done incorrectly.

Apart from that, I find it is not upon the tenants to interfere with the landlord's business. The landlord has the right to choose the contractors who work on the property. I find the tenants' written request to the roofing company, questioning their work and making requests, is overstepping in their role of a tenant.

As I have found that the tenants have not proven the repair was urgent or an emergency repair as defined under the Act and that they provided insufficient evidence that a repair under section 32 of the Act was needed, I find the tenants submitted insufficient evidence to prove their application. As a result, I **dismiss** the tenants' application, **without leave to reapply**.

As I dismissed the tenants' application, I also decline to award recovery of their filing fee.

### Conclusion

The tenants' application is dismissed without leave to reapply due to insufficient evidence of an emergency repair or other repair.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 14, 2022

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Residential Tenancy Branch