



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      ERP

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on March 2, 2023, and March 28, 2023. The Tenant applied for an expedited hearing to have the Landlord make emergency repairs to the rental unit, pursuant to section 33 of the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's initial package, which contained the Notice of Dispute Resolution Proceeding and some evidence. The Tenant uploaded further evidence to the RTB website, following this initial batch of evidence. However, she stated that she never served it to the Landlord. The Tenant did not provide any compelling reason as to why she, or someone on her behalf, was unable to serve her second batch of evidence to the Landlord. As the Tenant's second batch of evidence was not served to the Landlord in accordance with the Rule of Procedure, I find it is not admissible and will not be considered further. I also note the Tenant failed to provide any evidence to show she had an agreement with the Landlord to serve documents via email, which means she was required to serve the Landlord in one of the traditional methods of service under section 88 and 89 of the Act. The Tenant only served her initial package, in accordance with the Act. As such, that is the only package that is admissible.

The Tenant acknowledged receipt of the Landlord's evidence package and no service issues were raised for this package.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision. Not all evidence and testimony will be summarized, unless it is relevant to the issues I must decide on.

### Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make emergency repairs?

### Background and Evidence

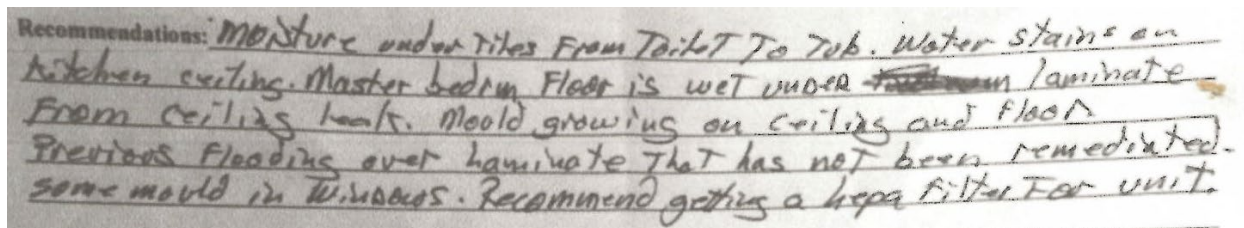
As per her application form, the Tenant is seeking “emergency repairs” for the following items:

- a) electrical panel modified and moved so that she has personal access to the panel from her suite.
- b) Main entry door jamb replacement for security purposes (improperly sized door with 12 inch crack)
- c) Gutters along the side of the unit need repairs as they are hazardous when ice accumulates
- d) Kitchen cabinetry inaccessible and warped due to leaks and some drywall missing
- e) Bathroom cabinet warped and crumbling due to leaks in past, including tub surround lifting
- f) Laminate flooring wet, separating, and needs mould remediation
- g) Master bedroom bulkhead requires a plumber to fix ongoing leak, prior to removal of bulkhead
- h) Master bedroom needs closet install with hardware
- i) Complete remediation of the unit for mould

During the hearing, the Tenant stated there are still issues with the kitchen cabinets, and there is no vapour barrier/drywall in some areas. The Tenant also generally pointed to the issues with the flooring, bathroom cabinets, the front door/door jamb, and the ongoing leaks (and mould concerns). The Tenant also stated that the electrical is not up to code.

The Tenant stated she wants properly bonded and insured tradesmen to perform any and all repairs so that it is done properly. The Tenant stated that there have been leaks occurring in the rental unit for many years, and that this has caused mould issues in the rental unit. The Tenant pointed to a leak in the master bedroom, along with the wet ceiling/drywall in that area. The Tenant also pointed to issues with the lifting and separation of the flooring, due to the water leak.

The Tenant asserts that she has had health implications from exposure to the mould in the unit. The Tenant provided documentation showing she sought medical attention in November 2022. The Tenant hired a mould inspector in November of 2022. This report specified the following recommendations:



Recommendations: Moisture under tiles from Toilet To Tub. Water stains on kitchen ceiling. Master bedroom floor is wet under ~~tile~~ laminate from ceiling leak. Mould growing on ceiling and floor. Previous flooring over laminate that has not been remediated. Some mould in windows. Recommend getting a hepa filter for unit.

The Tenant also provided photos showing potential mould near the bathroom cabinet, due to a leak under the bathroom sink. The Tenant provided a picture of the underside of the rusted bathroom sink, with a hole in it. The Tenant also provided a photo of mould growth in the bulkhead of the master bedroom with a hand written date stamp of November 2023. The Tenant also provided photos, with handwritten date stamps from November 2023, showing potential mould growth under flooring in the master bedroom as well as issues with the bathroom cabinet.

The Tenant also provided several photos of a variety of issues, including the items listed above. The Tenant provided a copy of an electrical “estimate” from July 2021, which lists off some safety upgrades to receptacles, and the panel, and other items. The estimate notes that the repairs could run \$12,000.00. The Tenant is frustrated because the breakers trip, and she has no ability to access the main panel since it is not in her unit.

The Tenant brought witnesses to the second hearing to corroborate that she keeps her rental unit in good, sanitary condition, and there are no concerns regarding how she lives in the rental unit in terms of hygiene or lifestyle. They also assert that the dogs living in the rental unit are not leaving feces and urine on the floors. The witness spoke to seeing water damage on the ceiling but did not speak to where this was located.

The Tenant asserts that the walls, flooring, and ceiling need to be removed, and all mould remediated before it is safe to live in the unit. The Tenant stated she is willing to move out while the Landlord repairs the unit, but she wants to move back in after the repairs are completed. The Tenant clarified that the issues with water leaking into the ceiling and walls in the bedroom have been ongoing for 2.5 years, and very little has been done. More specifically, the Tenant pointed to the most recent incident with water in the bedroom area, and stated that on February 22, 2023, water again began leaking through the ceiling from the unit above. The Tenant stated that the leak happened again in early March, and shortly thereafter, the Landlord hired a handyman to attend the upper rental unit to look at the cause of the leak.

The Tenant stated that since that time, there has not been any further leaks. However, her main concern now is the mould issue.

The Landlord that they have a handyman who has worked with them on a variety of issues with the rental unit in the past. He provided a letter into evidence, which states that he installed the kitchen cabinets in 2017, and that the Tenant appears to have moved the cabinets, and the sink 4-5 feet to one side, improperly, and may have led to some of the issues she is experiencing. This handyman spoke to the neglect of the Tenant residing in the unit as well as to the repairs he has recently completed in the unit, as follows:

-Jan/21 Replaced toilet and fixed bathtub (silicone). Told Ms [REDACTED] to keep tub surround clean and dry otherwise it will cause leak or mold.

Feb/21 Fixed leak in Kitchen sink (which was likely due to the cabinets being moved and the plumbing messed with).

March/21 Fixed mold around bathtub and again told Ms [REDACTED] to keep it clean and dry to avoid future mold.

June/21 Fix Drywall in ceiling after water leak was fixed by Janson Plumbing. Replaced window screens.

Aug/21 Replaced Kitchen counters.

The Landlord explained that on June 4, 2021, they got a call from the Tenant about water dripping in her bedroom, which they promptly fixed (invoice provided). Then, on October 19, 2021, the Tenant contacted them again about water dripping from the same place. However, after the plumber came back a second time, no leak was found (invoice provided).

The Landlord asserts that no electrical repairs are required, and they feel the Tenant has exaggerated the mould issues. The Landlord further pointed out that the Tenant

caused the damage to the kitchen cabinets by moving them herself without permission, yet despite this, the Landlord's handyman did minor repairs to fix the problems so that they are functional. With respect to the previous leak in the ceiling of the Tenant's bedroom, the Landlord noted that this appears to have come from the unit above the Tenant, from the bathroom. However, that issue was fixed. The Landlord stated that they replaced the drywall in that area, and were going to repair the affected flooring, but the Tenant was not cooperative with moving her furniture for the work to be done.

The Landlord also pointed out that they had an electrical inspection done by an electrician on or around January 14, 2023, and he only found one issue, which was that there was a plug above the sink. The Landlord pointed out that this is only an issue because the Tenant moved and reinstalled the cabinets, and the sink, to a new location. The Landlord stated that the same electrician went back on February 17, 2023, and "dealt with" the issue.

The Landlord stated that they noticed, as part of their inspection in January of 2023, that the Tenant has installed and plugged in two electrical fireplaces, which may be contributing to the issue with the breakers in the panel being tripped.

The Landlord provided a copy of the report from Technical Safety BC, dated February 15, 2023, which was to investigate the Tenant's allegations of unsafe electrical wiring. The technician determined that the Tenant was overloading circuits with multiple powerbars, plug in heaters etc. The receptable behind the kitchen sink was noted as being in the wrong place. However, this was remedied by putting a cover plate over the receptable.

The Landlord provided before and after photos of the kitchen, showing the Tenant moved the cabinets, the sink, and the refrigerator while she was living in there.

The Landlord also pointed out that following the most recent leak in February 2022, they hired their handyman to look at the cause of the leak in the unit above this rental unit. The Landlord explained that the handyman found that the showerhead in the unit above was leaking into the wall, and was likely the cause of the problem. The Landlord explained that the handyman repaired the showerhead, and since then, there have been no leaks or issues.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings.

The onus is on the Tenant to demonstrate the emergency repairs are required.

First, I turn to Section 33(1) of the Act, which defines "emergency repairs" as 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:

- 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, or
- The electrical systems.

I note the Tenant is seeking "emergency repairs" for the following items, as per her application:

- a) electrical panel modified and moved so that she has personal access to the panel from her suite.
- b) Main entry door jamb replacement for security purposes (improperly sized door with 12 inch crack)
- c) Gutters along the side of the unit need repairs as they are hazardous when ice accumulates.
- d) Kitchen cabinetry inaccessible and warped due to leaks and some drywall missing
- e) Bathroom cabinet warped and crumbling due to leaks in past, including tub surround lifting
- f) Laminate flooring wet, separating, and needs mould remediation
- g) Master bedroom bulkhead requires a plumber to fix ongoing leak, prior to removal of bulkhead
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- i) Complete remediation of the unit for mould

I have reviewed the above noted items, and I find most do not qualify as emergency repairs, as defined by section 33 of the Act. More specifically, with respect to item a) above, I do not find there is sufficient evidence showing that there is any significant issue, requiring repair. Although the Tenant had the unit looked at by an electrician in July of 2021, I note the Landlord also had the unit inspected by an electrician in January

and February of 2023, and Technical Safety BC was involved via an electrical permit. The only issue raised at that time was relating to the receptacle above the sink, which has now been rectified by installing a cover plate.

With respect to item b), I accept that there is an issue with the door jamb. However, I do not find there is sufficient evidence that there is an issue with the locks that give access to the unit itself. With respect to item c), I do not find this meets the criteria for emergency repairs, as I do not find a gutter/downspout qualifies as a “major leak” in the pipes or the roof, nor does it relate to damaged or blocked water or sewer pipes or plumbing fixtures. With respect to item d), e), f), I do not find that cabinetry or flooring qualifies as emergency repairs. With respect to item h), and i), I do not find closet hardware or mould remediation qualifies as an emergency repair, pursuant to section 33 of the Act.

With respect to item g), it is not disputed that there has been a series of leaks in this area over the last couple of years. There may have been different causes for the leaks over the years. However, it appears that the most recent leak in the ceiling of the bedroom (coming from the bathroom above) is not ongoing. Although the Tenant wanted the leak to be addressed by the proper qualified plumber, I find it is up to the Landlord who they hire and bring in to perform the repairs. There is insufficient evidence that the handyman who repaired the showerhead in February/March of 2023 was not sufficiently qualified to complete the repair in a safe and reasonable manner. The Tenant acknowledged that the most recent leak in the ceiling of the bedroom stopped actively leaking after the Landlord’s handyman attended the upper unit to do some repairs. The Landlord agreed with this, in that their handyman fixed the showerhead upstairs, which had been leaking into the wall, causing the issue. Ultimately, I acknowledge that there may be other general repairs that may be required to fully restore the rental unit. However, given the active leak appears to have been fixed, recently, I find there is no emergency repair order required for this matter, as there is currently insufficient evidence that there is an ongoing major leak in the pipes/roof, nor is there sufficient evidence of ongoing damaged or blocked water or sewer pipes or plumbing fixtures. It appears most of the Tenants concerns are regarding mould in the unit, which does not meet the criteria for an emergency repair.

As such, I dismiss the Tenant’s request, in full.

### Conclusion

The Tenant’s application for emergency repairs, is dismissed, without leave to reapply.

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: March 29, 2023

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Residential Tenancy Branch