



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**      ERP

#### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

#### **Issues(s) to be Decided**

Should any orders be issued against the landlord to perform emergency repairs of this rental unit?

#### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on December 1, 2019, and is to continue until December 1, 2024. Both parties confirmed that the tenants are currently paying \$900.00 in monthly rent for this tenancy. The landlords hold a security deposit of \$450.00.

The tenants filed this application for emergency repairs to the septic system. The tenants testified that the septic system broke down on April 21, 2021, and the landlords failed to perform proper repairs. The tenants had testing performed using dye, and noted that raw sewage was leaking onto the property. The tenants notified the local health authority, and filed this application as the landlords have not performed proper repairs. The tenants do not believe that the landlords intend to perform the repairs in a timely manner as they are still waiting for a resolution despite the actions taken by the tenants.

The tenants called a witness, DF, in the hearing. DF testified that they had attended the property, and was present when the health officer attended to perform the inspection. DF testified they could smell the sewage on the property.

The landlord AF attended the hearing, and does not dispute that repairs are required. AF testified that they complying with the direction of the local health authority, but cannot confirm a definite timeline for repairs. AF testified that they are working with their senior installer, and are waiting for a permit to be approved. AF testified that the delay was also due to supply chain issues. AF provided a receipt for porta potties that are currently provided in place of the toilet facility.

### **Analysis**

Section 33 of the *Act* states the following in regards to emergency repairs:

### **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.

(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...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) 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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I am satisfied that the landlords confirmed in the hearing that repairs to the septic system are both required, and are being undertaken by the landlords.

Although I note that the landlords did provide an alternative facility, a porta potty, for the tenants to use, this is meant to be a temporary arrangement until the septic system is repaired. I find that this repair is urgent as it relates to the tenants' ability to use the regular toilet inside the home. I order that the landlords maintain the property, and undertake and complete repairs as required by section 32 of the *Act*.

Given the testimony and evidence before me, I order the landlords to retain the services of a licensed contractor to perform repairs to the septic system in the home. I order that the landlords provide the tenants with written confirmation from the licensed contractor

of the specific timeline and scope of work for the repairs. I order that the confirmation be provided to the tenants by April 30, 2023.

I order the landlords to undertake necessary repairs performed by the licensed contractor as soon as possible. I order that the landlords complete the repairs within a reasonable amount of time, and by no later than two months of the receipt of this decision. In the event that there are specific issues or delays that are preventing the landlords from fulfilling this obligation to complete the repairs within two months, I order that the landlords provide written confirmation and details of these delays. For example, if the landlords are waiting for permits, the landlords should provide proof of the permit applications. If the landlords are waiting for parts and materials, the landlords should provide proof that these parts have been ordered.

The tenants are at liberty to apply for any applicable rent reductions pursuant to section 65 of the *Act* if the landlords fail to comply with the *Act* or tenancy agreement, or if there is a reduction in the value of the tenancy agreement.

### **Conclusion**

I order that the landlords maintain the property, and undertake and complete repairs as required by section 32 of the *Act*.

Given the testimony and evidence before me, I order the landlords to retain the services of a licensed contractor to perform repairs to the septic system in the home. I order that the landlords provide the tenants with written confirmation from the licensed contractor of the specific timeline and scope of work for the repairs. I order that the confirmation be provided to the tenants by April 30, 2023.

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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 17, 2023

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Residential Tenancy Branch