



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

On July 11, 2023, the Tenants applied for a Dispute Resolution proceeding seeking an emergency repair Order pursuant to Section 33 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing and advised that the third person they listed as an Applicant was not a Tenant. As such, this person has been removed from the Style of Cause on the first page of this Decision accordingly. M.L. attended the hearing simply to assist the Tenants with organization of their documents. The Landlord attended the hearing as well, with E.P. attending the hearing as an agent for the Landlord, and P.D. attending the hearing as counsel for the Landlord.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of M.L. and P.D., provided a solemn affirmation.

Tenant Y.Y. advised that the Landlord was served with the Notice of Hearing and evidence package by registered mail on July 13, 2023. She also testified that they served additional evidence, contrary to Rule 10.2 of the Rules of Procedure (the “Rules”), to the Landlord by registered mail and by email on August 5, 2023. She confirmed that they did not have consent to exchange documents with the Landlord by email.

E.P. confirmed that the Landlord received the Notice of Hearing and evidence package by registered mail in July 2023. As well, she testified that the Landlord did not receive the Tenants’ additional evidence by registered mail, and that emails were received from

the Tenants. However, as they were inundated with so many emails from the Tenants, it is unclear if one of these contained the Tenants' evidence. P.D. opposed that this additional evidence be accepted as it contradicts the Rules.

Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Tenants' Notice of Hearing and evidence package served by registered mail in July 2023. As such, I have accepted this evidence and will consider it when rendering this Decision. However, as the Tenants served additional evidence contrary to the Rules, and opposed by P.D., I have excluded this additional evidence and will not consider it when rendering this Decision.

E.P. advised that she served the Tenants with the Landlord's evidence by registered mail, to the dispute address and to another address that the Tenants resided at, on August 5, 2023 (the registered mail tracking numbers are noted on the first page of this Decision). She stated that neither of these packages were returned to sender. As well, she stated that she emailed this evidence to the Tenants on August 3, 2023, and that the Tenants replied to this email.

Y.Y. advised that she was not sure if they received that specific email. As well, she stated that they do not live at the dispute address and only check their mail infrequently. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was mailed to the dispute address. Moreover, pursuant to Section 90 of the *Act*, I find that this evidence was deemed received five days after it was mailed. As this evidence was served in accordance with the timeframe requirements of Rule 10.5 of the Rules, I have accepted the Landlord's evidence and will consider it 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

- Are the Tenants entitled to an emergency repair Order?
- Are the Tenants 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.

All parties agreed that the tenancy started on June 1, 2023, that the rent was established at an amount of \$8,500.00 per month, and that it was due on the first day of each month. A security deposit of \$4,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

Given the nature of this Application, the Tenants were provided with an opportunity to make submissions on how their situation fell under Section 33 of the *Act* regarding emergency repairs. Y.Y. advised that they only moved into the rental unit on July 1, 2023, and moved out on July 12, 2023, based on an alleged mould issue in the rental unit. She claimed that she had possibly developed asthma due to this, and she referenced documentary evidence of other health concerns her family suffered from. However, there was no documentary evidence from any medical professional that confirmed that any health conditions suffered were as a result of mould in the rental unit.

When the Tenants were asked to explain what repairs needed to be completed in the rental unit that would fall under Section 1(c) of the *Act*, Y.Y. testified that there was an issue with the plumbing system, and she directed me to various reports submitted as documentary evidence. However, she could not point to anywhere in these reports about a plumbing system deficiency. More specifically, Tenant G.R. cited one specific report where it was noted that the drainpipes were outdated and should be replaced. However, he indicated that this report also noted “only slightly elevated levels of mould” and that the levels of mould detected in the rental unit were “considered to be safe”. Furthermore, he read an excerpt from a report, that was part of their excluded evidence, that he suggests supports their submission that the alleged presence of mould in the rental unit was caused by an issue that would fall under Section 1(c) of the *Act*.

P.D. advised that the Tenants have not made submissions to support a claim that the alleged presence of mould falls under Section 33 of the *Act*, and what they have described is not urgent. There has been no accident during the tenancy, there are no blocked pipes in the rental unit, and there is nothing broken. He noted that the mould company that authored one of the reports that the Tenants referenced is not a qualified plumber or structural engineer, so they cannot speak to the condition of the rental unit. As well, he submitted that the Tenants have provided no documentary evidence of any causality between any alleged mould issue in the rental unit, and their purported health ailments.

### 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 33 of the *Act* outlines the Landlord's and Tenants' duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

### **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.**

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Furthermore, given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the claims made by the Tenants, I find it important to note that the Tenants have not provided any documentation from a medical professional that has diagnosed any of their health conditions. Furthermore, there is also no documentary evidence from a medical professional that has linked any of these alleged ailments or health conditions with a possible deficiency in the rental unit. Moreover, given that the Tenants only occupied the rental unit for 11 days, I am skeptical that any alleged sicknesses could have developed so rapidly in such a short amount of time, especially the suggestion of developing asthma. Based on the short amount of time that they occupied the rental unit, it is entirely possible, and even likely, that the Tenants or their children suffered from these asserted illnesses prior to moving into the rental unit. As such, I am not satisfied that the Tenants have adequately justified that fixing any alleged issue in the rental unit was urgent or necessary for the health or safety of anyone in the rental unit.

Regardless, even if I were to accept that the Tenants satisfied the ground under Section 1(b) of the *Act* that this matter was urgent or necessary for the health or safety of anyone in the rental unit, I find there to be little compelling or persuasive documentary

evidence, that the Tenants have directed me to, that supports their claims that there is a deficiency in the rental unit that falls under one of the criteria of Section 1(c) of the *Act*. Ultimately, when reviewing the totality of the evidence before me, I am not satisfied that the Tenants have submitted sufficient evidence to corroborate that there is a legitimate emergency repair concern under Section 33 of the *Act*. As such, I find that the granting of an emergency repair Order has not been substantiated, and I dismiss the Tenants' Application with respect to a claim for emergency repairs in its entirety.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I dismiss the Tenants' Application for Dispute Resolution, pertaining to an emergency repair, 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: August 15, 2023

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Residential Tenancy Branch