



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## Decision

Dispute Codes: MNDC, OLC, RP, RR, FF

### Introduction

This hearing was to deal with an application by the tenant for a monetary order for compensation for damage or loss under the Act, an order that the landlord comply with the Act and complete repairs and a rent abatement allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided.

A previous hearing had been held on the tenant's application seeking compensation and repair orders on November 18, 2010 and the decision issued on December 15, 2010 shows that the tenant was successful in being granted orders for repairs the tenant had identified as outstanding. The dispute resolution officer held that should the landlords fail to satisfy the orders made, the tenants would be at liberty to make another application for compensation and/or alternative remedies for the landlords' failure to comply with the orders.

Both parties appeared and gave evidence.

### **Issues to be Decided.**

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to a monetary order to compensate for damages.
- Whether the tenant is entitled to a rent abatement based on condition issues that exist in the unit that continue to deprive the tenant of services and facilities required by law.
- Whether the landlord has failed to comply with an order issued to repair and maintain the unit and should be ordered to do so.

The burden of proof is on the landlord to establish that the landlord did comply with the previous order. The burden of proof is on the tenant to prove that compensation and additional orders to comply are warranted.

### **Preliminary Matter**

The landlord stated that he did not have enough time to submit evidence to dispute the tenant's application and requested that the matter be adjourned for two weeks. The tenant declined to consent to an adjournment, pointing out that this second application and hearing would not have been necessary had the landlord complied with the original orders issued on December 15, 2010.

Rule 4.1 requires that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents and other evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.

In some cases the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met and if this is the case, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

If copies of the respondent's evidence are not received by the Residential Tenancy Branch or served on the applicant as required, the Dispute Resolution Office must apply Rule 11.6 to evidence the respondent presents at the dispute resolution proceeding [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

In this instance the tenant made application on January 18, 2011 and served the application the same day by registered mail. Under the Act, the respondent landlord was deemed to have received the material five days later, which would be January 23, 2011. That was 9 days before the hearing.

In any case, when asked what evidence would have been presented by the landlord to prove that the landlord had complied with the previous order, the landlord could not identify the relevant evidence that would have been presented to establish his compliance. In fact, the landlord's intention appeared to be to dispute the merit of the previous orders already issued, which was not under consideration in the current proceedings. A prior determination was made on that issue and the matter was considered to be *rez judicata*, that is it had already been determined. The landlord was informed that it was not within my jurisdiction as I lacked the authority to determine or review a previous decision already rendered. Accordingly I found that no adjournment was warranted and the hearing proceeded.

#### Background and Evidence

The tenancy commenced May 15, 2010 and current rent is \$2,300.00 due on the 15<sup>th</sup> day of each month. The rental unit included two full bathrooms and one half bathroom. The tenant testified that the landlord had failed to comply with the order issued in the decision issued on December 15, 2010 which had ordered the landlord to repair the cracked toilet and tiles in the bathroom and ordered that the landlord rectify the slippery surface of the steps and secure the loose handrail. The tenant testified that the landlord also failed to repair the two unusable fireplaces for which the tenant had been granted a rent abatement of \$100.00 per month pending their remediation by the landlord.

The tenant requested another order to force the landlord to address the above deficiencies and asked that rent be reduced \$800.00 per month for repairs, services or facilities not provided.

The landlord acknowledged that the repairs were not completed and attempted to give testimony disputing the original decision and orders issued on December 15, 2010. The landlord stated that he did not have a chance to get an expert opinion on the repair of the cracked toilet and tiles, but agreed that these repairs will be fully addressed within the next two weeks. The landlord also agreed to attend to the loose railing but questioned whether anything could be done about the fact that the wooden steps become slippery in wet or icy conditions.

### **Analysis**

The tenant's application requested that the rent be reduced for repairs, services or facilities not provided and set this amount at \$800.00. In regards to compensating a party for the loss of services or other damages, I find that section 67, permits a party to be reimbursed for losses and damages if the burden of proof has been met to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses, pursuant to section 7. The evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Upon consideration of all of the evidence before me, I make the following findings.

With respect to repairing and maintaining a rental unit, the Act provides that the landlord has obligations to repair and maintain a unit to ensure it complies with the health, safety and housing standards required by law

I find that the landlord was ordered to either restore the gas fireplace and wood-burning fireplace or reduce the rent by \$100.00. As the landlord has evidently decided against restoring the fireplaces, and the matter was already dealt with at the previous hearing, I find that the abatement of \$100.00 in the tenant's rent will continue indefinitely.

The landlord was already ordered to repair or replace the damaged tiles and the toilet within two weeks of receiving the decision and I find that this was not done. I find that issuing another order to do the same thing as already ordered would not be appropriate. The landlord was also ordered to make the other repairs that were outstanding, including taking measures to make the steps and railings safe within two weeks of the decision, and I find that this was not done.

Therefore, I hereby order that the tenant is now entitled to a further rent abatement of \$100.00 per month for the bathroom toilet and tiles and \$100.00 per month for the loose deck railing and the slippery steps for a total of \$200.00 monthly abatement, in addition to the previously-ordered \$100.00 abatement for the loss of the fireplaces.

The additional \$200.00 rent abatement affects the rent for January 2011 and will continue until all of the repairs are completed and the landlord has made its own application and obtained an Order through dispute resolution, by proving that there has been full compliance with the previous orders to repair the toilet, the cracked bathroom tiles, the loose deck railing and the dangerous steps. This rent abatement will cease the first month after the landlord serves an Order on the tenant ordering that the rent will be restored from \$2,000.00 per month back to \$2,200.00 per month.

The tenant is therefore entitled to deduct the accrued abatement of \$450.00 representing \$200.00 reduction for January 2011 and \$200.00 reduction for February 2011 and the \$50.00 cost of the application, from future rent owing to the landlord.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby order that the tenant's rent, starting in January 2011 is reduced to \$2,000.00 per month reflecting a further rent abatement of \$200.00 for the landlord's failure to follow the order to repair the bathroom toilet, tiles, loose deck railing and the slippery steps. This abatement is in addition to the previously-ordered \$100.00 continuing abatement for the loss of the fireplaces.

The additional \$200.00 rent abatement will continue until the first month after the landlord serves an Order obtained through dispute resolution on the tenant legally ordering that the rent be restored from \$2,000.00 per month back to the rate of \$2,200.00 per month.

I order that the tenant deduct from future rent owed, the two-months accrued abatement of \$400.00 for January 2011 and February 2011 plus the \$50.00 cost of this application.

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: February 2011.

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Residential Tenancy Branch