



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, RP, ERP, RR, MNDC

### Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act, Regulations or tenancy agreement by making emergency repairs and general repairs, for a rent reduction due to the Landlord's alleged failure to make repairs and for compensation for damage or loss under the Act or tenancy agreement.

### Issue(s) to be Decided

1. Are repairs necessary?
2. Is the Tenant entitled to compensation?
3. Is the Tenant entitled to a rent reduction?

### Background and Evidence

This month-to-month tenancy started in May 2009. Rent is \$844.00 per month which includes hot water, parking and storage.

The Tenant said the seals on the windows in his bedroom and dining room are damaged with the result that condensation is leaking in between the metal frame and the window sill. The Tenant also claimed that there is mould on the window sills. The Tenant said he brought this to the attention of the Landlord's agent in writing December 2011 however she did not respond to him until after he filed his application for dispute resolution in this matter.

The Tenant also said the balcony off of his suite is in poor condition that the flooring has rotted through in at least one spot, the paint is chipping off and the frame where it is attached to the building has started to separate. The Tenant said there is also evidence of what he believes to be mould. The Tenant said he brought this to the attention of a former building manager shortly after he moved in however that person advised him that the Landlord would not be repairing it. The Tenant said he received a Notice from the Landlord in mid-April 2011 advising him that his balcony would be repaired. The Tenant said while other balconies were repaired, his was not. The Tenant said he submitted a repair requisition form at the end of June 2011 and contacted the building manager at the end of July 2011 to find out when his balcony would be repaired and she told him

that the maintenance person would come to look at it but that never happened. Consequently, the Tenant said he gave the Landlord's agent another letter on December 1, 2011 asking to have his balcony repaired. The Tenant said he did not get a response to his request until after he filed his application for dispute resolution in this matter.

The Tenant also said that the floor in his rental unit is warped. The Tenant said the floors are wood and he believes the warping may be the result of water leaking from the patio under the flooring. The Tenant said he addressed this issue with the building manager in his letter to her of December 1, 2011. The Tenant said he did not get a response to this letter until after he filed his application for dispute resolution.

The Tenant said he is seeking compensation for the loss of use of his balcony since May of 2009. The Tenant said he is also seeking compensation for being disturbed by construction noise for 2 months in the summer of 2010 (when roof repairs were being done) and for construction noise for 2 months in 2011 (when balcony repairs were being done). The Tenant admitted that he did not advise the Landlord that the construction noise was disturbing him.

The Tenant also sought compensation for the loss of use of his living room. The Tenant said he was advised by the Landlord in mid-April 2011 to move everything from his balcony so that it could be pressure washed. The Tenant said that as a result of this notice he moved an air conditioner into his living room and then did not move it back because he did not believe it was safe to put it back on the rotted floor of the balcony. As a result, the Tenant claimed his use of his living room is obstructed by having the air conditioner stored there. The Tenant also sought compensation for the loss of use of a storage facility. The Tenant said someone's furniture was left in the storage area and obstructed his ability to access his storage unit for 2 months.

The Tenant also claimed that his use and enjoyment of the rental unit and the common areas of the rental property has been impaired by the Landlord's failure to repair and maintain it. In particular, the Tenant claimed the Landlord has not repaired damaged or missing gutters, has not repaired an exit sign, does not replace light bulbs in hallways, has allowed water to drip in a stairway landing which has rotted the stairs and has allowed garbage to accumulate on the property. The Tenant also claimed that there is mould throughout the rental property.

The Landlord's agent said she inspected the rental unit in early February 2012 and the seals on the windows appeared to be fine. The Landlord's agent said she could not see any mould on the window sills but instead only discolouration from condensation. The Landlord's maintenance person (W.W.) also gave evidence that when he inspected the rental unit he did not find mould on the windows but did notice some black residue and chipping paint likely due to condensation. W.W. said he recommended to the Tenant that he turn up his dehumidifier and to open his window intermittently to ventilate the excess moisture.

The Landlord's agent said she also inspected the Tenant's balcony in early February 2012 and acknowledged that it would have to be repaired as would many others in the rental property. The Landlord's agent said the Landlord has engaged an independent contractor to repair all of the balconies and this work is done only in the summer months. The Landlord's agent said given the number of balconies still to be repaired, she could not guarantee if the Tenant's would be repaired this summer. W.W. claimed that he also inspected the balcony and while it showed signs of "wear and tear," and had a "soft spot" on the floor, he did not believe it was unsafe and claimed it could be used. W.W. said he repaired the railings on the balcony in the summer so there is no issue with the frame separating from the building.

The Landlord's agent denied that the floor of the rental unit was warped. The Landlord's agent claimed that the floor was concrete and not wood. The Landlord's agent also claimed that the floor may only appear warped to the Tenant because he had 2 carpets lying over another layer of carpeting. The Landlord's agent also claimed that the Tenant's air conditioner did not take up much room in his living room but that in any event there were other places where he could store it.

The Landlord's agent claimed that the Landlord has taken reasonable steps to repair and maintain the property and she denied that there was mould in the rental property. The Landlord's agent said there are regular building and safety inspections and argued that the building is up to Code. The Landlord's agent said a lot of exterior maintenance is done in the Spring and Summer months. The Landlord's agent also claimed that it is hard to keep up to some repairs due to ongoing vandalism.

### Analysis

#### **REPAIRS:**

Section 33 of the Act defines an emergency repair as one that is "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, the electrical systems." For the reasons set out below I find that there is insufficient evidence to conclude that any of the repairs sought by the Tenant fall within the definition of emergency repairs.

Section 32(1) of the Act says that "a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

In ***Susan Collard v Waterford Developments et al***, (BCSC No. S106268, Vancouver, February 4, 2011), the Honourable Mr. Justice Burnyeat held (at pp. 10-11) that a Tenant was entitled to bring an application for repairs not only with respect to his or her rental unit but also with respect to common areas and "other areas of a building that do

not directly impact the tenant.” His Lordship also noted, however, at p. 12 that a tenant relying on s. 32(1) of the Act “must be in a position to point to a municipal by-law or provincial statute which deals with the health, safety and housing standards which they believe have not been met by the landlord.”

The Landlord’s agent agreed to have the Tenant’s windows re-caulked. Based on the evidence of both parties, I find that there is insufficient evidence to conclude that there is mould on the Tenant’s windows or that if there is mould, that it is of a type or sufficient quantity to be a health hazard or otherwise render the rental unit unfit for occupation. Consequently, I make no order for the repair of the Tenant’s windows.

Based on the Tenant’s photographs showing a coat hanger protruding through a soft spot on the floor of the balcony, I would agree that the balcony floor appears to be in a poor state of repair, however, the Tenant provided no evidence to show that the current state of disrepair is a breach of health, safety and housing standards required by law. Until such time as the Tenant can provide evidence that the condition of the balcony does not comply with municipal building, health or safety standards, I find that he had not met the evidentiary burden required under s. 32 of the Act to warrant an Order for repairs to the balcony.

I also find that there is insufficient evidence to conclude that the floors in the rental unit are warped or that even if they are warped, that state of disrepair is a breach of building, health or safety standards. The Tenant also admitted that he had no evidence of an alleged water leak under the floors. Consequently, I make no order for repairs to the rental unit floor.

For similar reasons, I find that although the Tenant’s photographs show the rental property, as a whole, appears show signs of neglect as far as maintenance and repairs are concerned, the Tenant provided no evidence that any of these matters constitute a breach of health, safety and housing standards. Consequently, the Tenant’s application for repairs is dismissed with leave to reapply ***but only upon providing sufficient evidence as described in the Collard decision reproduced above.***

## COMPENSATION:

Section 27 of the Act says that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant’s use of the rental unit as living accommodation or providing the service is a material term of the tenancy agreement. If a Landlord does terminate or restrict a service or facility, the landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The Tenant sought compensation for the loss of use of his balcony, his living room and his storage locker and for being disturbed by construction noise on 2 separate occasions. I find that the Tenant is not entitled to be compensated for allegedly being

disturbed by construction noise. The Tenant admitted that he did not bring this to the attention of the Landlord on either occasion and therefore, I find that the Landlord did not have an opportunity to address the situation. I also find that the Tenant did not lose any significant use of his living room by having to remove his air conditioner from his balcony; the Tenant admitted that the air conditioner is 19"x 24"x 23" and that his living room is 15 feet x 10 feet in area. I also find that the Tenant could reasonably have moved (or asked someone for assistance in moving) the air conditioner into storage or another room and therefore I find that there is no merit to this part of his claim.

The Tenant claimed that some furniture blocked his access to his storage unit. The Tenant said he gave the building manager a letter on December 30, 2011 asking her to have the furniture removed no later than January 2, 2012. The Landlord's agent admitted that the furniture was not moved until mid-February 2012. The Landlord's agent said she tried to find out who the furniture belonged to first and then disposed of it. I find that it took an unreasonably long time for the Landlord to remove the furniture blocking the Tenant's storage locker and as a result, I find that the Tenant is entitled to compensation of \$30.00 per month for a period of 1 and ½ months for a total of \$45.00.

Although I have found that the Tenant did not meet the onus on him to have the balcony repaired, this does not mean that I conclude that the balcony is safe for use. I do not find W.W.'s opinion reliable that the balcony is safe to use given his further evidence that there is a "soft spot" on the floor and the Landlord's agent's acknowledgement that repairs are required. The Tenant argued that the whole floor is rotten and provided a photograph showing a coat hanger inserted through the floor of the balcony. I find that that the Tenant brought his concerns about the balcony to a building manager in May of 2009 but did nothing further until mid-June 2011 when he was advised repairs would be made but in fact they did not occur. I find it reasonable that the Tenant would have some apprehension about the safety of using the balcony until it was repaired and therefore I find he is entitled to compensation of \$50.00 per month for the loss of his balcony from June 2011 to and including February 2012 for a total of \$450.00.

The Tenant also sought compensation for the loss of enjoyment of common areas due to their state of disrepair and lack of maintenance. Section 28 of the Act says tenant is entitled to quiet enjoyment "including but not limited to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit and ***use of common areas for reasonable and lawful purposes, free from significant interference*** [emphasis added]." I find that the Tenant is not entitled to compensation under the Act for a loss of quiet enjoyment of common areas unless there is a significant interference with his use of them. In other words, while the Tenant's photographs show that some of the common areas have not been maintained or have been poorly repaired, I find that there is no evidence that this has significantly interfered with his use of those areas. Consequently, I find that the Tenant is not entitled to compensation on this ground.

In summary, I find that the Tenant is entitled to a total monetary award of **\$495.00** for the loss of use of his balcony and storage unit. I order pursuant to s. 65(1) and s. 72(2)

of the Act that the Tenant may deduct this amount from his rent payment for April 2012 when it is due and payable.

Conclusion

The Tenant's application for repairs is dismissed with leave to reapply. The Tenant's application for compensation is granted in part. 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 24, 2012.

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Dispute Resolution Officer