



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, OLC, PSF, RP, RR, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities required by law; for authorization to reduce the rent; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch on April 20, 2012 and May 02, 2012, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Landlord submitted documents to the Residential Tenancy Branch on May 07, 2012, copies of which were not served to the Tenant. As these documents were not served to the Tenant they were not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on April 27, 2012 and May 01, 2012, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

The issues to be determined are if there is a need for an Order requiring the Landlord to repair stairs in the rental unit; whether the Tenant is entitled to compensation as a result of the stairs being in a state of disrepair; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2008, and that the Tenant currently pays monthly rent in the amount of \$850.00.

The Tenant and the Landlord agree that the Tenant lives on the third floor of this residential complex and that she can either access her rental unit via a set of stairs on the side of the complex or through the front entrance. The Tenant stated that she normally accesses her unit via the side stairs as she finds this more convenient, as it eliminates the need to pass through two doors.

The Tenant stated that the stairs have been in a state of disrepair for a lengthy period of time and that another occupant of the residential complex fell through a hole in the stairs approximately two years ago. She submitted photographs of the stairs and landing that are the subject of this dispute. She stated that on December 27, 2011 she advised the Landlord that the stairs and landing needed repair and he told her not to use the stairs.

The Landlord stated that the City of Victoria has advised him that the stairs are unsafe. He submitted a letter, dated March 14, 2012, in which a building inspector for the City of Victoria informed him that the stairs are not safe to use and that a building permit is required for the repair. He stated that he blocked the stairs to prevent them from being used sometime in March of 2012.

The Landlord originally stated that the Tenant had informed him the stairs required repair on December 27, 2011; he then stated that he realized the stairs needed repair in April of 2012; and he then stated that he realized the stairs needed repair in March of 2012. He stated that he had a carpenter make temporary repairs to the stairs in February of 2012. When asked why he had the stairs repaired in February when he allegedly did not know they needed repair until March of 2012, he stated that he realized they needed repair in January of 2012. He subsequently agreed that he told the Tenant not to use those stairs if she deemed them unsafe when she reported her concern about the stairs to him.

The Landlord and the Tenant agree that on February 09, 2012 the Landlord repaired the stairs by securing a small piece of plywood over a hole in the deck, but that no other repairs have been made to the stairs/deck.

The Landlord stated that he applied for a building permit to repair the stairs on May 04, 2012. He stated he could not apply for a building permit earlier than May 04, 2012 as he needed plan drawings before he could submit his application for a permit. He stated that he intends to rebuild the stairs as soon as he has the building permit, as he understands they are required as a fire exit.

The Tenant is seeking compensation, at a rate of \$100.00 per month, for each month that she is unable to use the stairs. She is seeking compensation that it is retroactive to

January of 2012, which was when the Landlord told her not to use the stairs. She stated that her claim for compensation is an arbitrary amount that is based on the inconvenience of using the front access stairs. She stated that when she uses the front access stairs she has to pass through an additional two doors, which open and close automatically, which requires her to place items she is carrying on the floor in order to open the doors and close them without making excessive noise.

The Landlord does not believe that the Tenant is entitled to compensation as he is making efforts to repair the stairs.

### Analysis

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the 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.

On the basis of the Landlord's testimony that he believes these stairs are required as a fire exit, the letter from the City of Victoria, dated March 14, 2012, and the photographs submitted in evidence, I find that the stairs/landing that are the subject of this dispute have not been maintained in a manner that complies with section 32(1) of the *Act*. I therefore Order the Landlord to take reasonable steps to obtain a building permit to repair or replace the stairs/landing and to complete those repairs/replacement within one month of receiving a building permit.

Section 28 of the *Act* stipulates that a tenant is entitled to the quiet enjoyment of their rental unit, which includes the use of common areas for reasonable and lawful purposes. I find that the Tenant's right to the quiet enjoyment of a common area, specifically the side stairs which she has historically used to access her rental unit, has been breached.

It is always necessary to balance a tenant's right to quiet enjoyment with a landlord's right and responsibility to maintain the premises. Typically I would not grant the Tenant compensation for the loss of the quiet enjoyment of a common area if a tenant was temporarily unable to use the stairs for a short period of time while they were being repaired/replaced. In these circumstances, however, I find that the Landlord has allowed the stairs to fall into a significant state of disrepair; they should not be used until they are repaired; and that they cannot be repaired until proper permits are required. I find that this is an unacceptable delay which would not have been necessary if the Landlord had taken steps to maintain the stairs before they fell into such a significant state of disrepair. I therefore find that some compensation is warranted in these circumstances.

I find that the inconvenience of using the front stairs is relatively minor. I therefore award the Tenant compensation, at a rate of \$25.00 per month. I therefore award the

Tenant compensation of \$125.00 for the period between January of 2012 and May of 2012.

I find that the Tenant's Application for Dispute Resolution has merit and I find that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$175.00, which is comprised of \$125.00 in compensation for being unable to use the side stairs for five months and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Tenant to reduce one monthly rent payment by \$175.00 in full compensation of this monetary claim.

I further authorize the Tenant to reduce her monthly rent by \$25.00 per month, effective June 01, 2012, and to reduce each subsequent monthly rent payment by \$25.00 until such time as the stairs are repaired and can be used by the Tenant.

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: May 15, 2012.

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Residential Tenancy Branch