



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNDC, RP, PSF, RR, and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for authorization to reduce the rent, 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, and to recover the filing fee from the Landlord for the cost of filing this application.

The Landlord and the Tenant 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 relevant submissions.

The Landlord and the Tenant agree that the Respondent with the initials "D.L." has merely represented the Landlord during the tenancy. The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Agent for the Landlord, via registered mail, at the service address noted on the Application, on August 30, 2012. In the absence of evidence to the contrary, I accept that this person was served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however she did not appear at the hearing.

The Tenant submitted documents to the Residential Tenancy Branch, 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.

The Landlord requested an adjournment of the proceedings for the purposes of preparing evidence that relates to this matter. She stated that she has been unable to properly prepare for these proceedings as a result of health issues. When asked what evidence she would have prepared she stated that she would have obtained written evidence from the Respondent with the initials "D.L." and from an individual who will repair the rental unit on her behalf. The Tenant opposed the application for an adjournment as she believes the repair issues are urgent.

I denied the application for an adjournment on the basis that Landlord did not need to obtain written evidence, as the Respondent with the initials "D.L." and the individual who could repair the rental unit could have attended the hearing to present testimony on

behalf of the Landlord. I specifically note that the Landlord was able to participate in the hearing and I can therefore find no reason to conclude that she was not medically able to ask the aforementioned parties to also participate in the hearing.

### Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to a rent refund of \$3,200.00 as compensation for not having full access to the basement of the residential unit; to a rent reduction for living with deficiencies with the rental unit; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to give the Tenant full use of the basement in the unit; and to recover the cost of filing this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 27, 2012 and that the Tenant is obligated to pay monthly rent of \$1,600.00 by the first day of each month.

The Tenant stated that when this tenancy began the Landlord advised her that she was storing property in the basement of the home and that it would be removed when the Landlord returned from Florida, which would be approximately 3-6 months after the start of the tenancy. The Tenant is seeking a rent refund of \$800.00 per month for the months of May, June, July, and August that she has been denied the full use of the house, which is \$3,200.00.

The Landlord stated that the Tenant was informed that the Landlord was storing property in the basement of the home; that the Tenant was informed that the Landlord would sort through it at some time in the future; and that the Tenant was never informed that the property would be removed. The Landlord and the Tenant agree that there is nothing in writing regarding access to the basement of the rental unit.

The Tenant stated that there was no smoke detector in the upstairs of the residence when she moved into the rental unit and that she installed a smoke detector shortly after she moved into the unit. She stated that the smoke detector in the basement of the residence has been damaged and does not work. The Tenant is seeking an Order requiring the Landlord to install a functional smoke detector in the basement of the rental unit.

The Tenant stated that the living room, dining room, and sunroom are not heated. The Landlord stated that the oil furnace in the home was removed several years ago but the main living area is heated by two electric forced air heating ducts. The Tenant stated that these ducts do not provide any heat. The Landlord stated that she will have the heating system inspected by an electrician and repaired, if necessary.

The Landlord and the Tenant agree that there is currently no method of heating the sunroom. The Landlord stated that she will ensure the Tenant is provided with a free

standing heater that will heat this area. The Tenant does not want a free standing heater as they are expensive to operate and she does not believe they are safe.

The Landlord and the Tenant agree that when the parties entered into this tenancy agreement the Landlord promised to repair the carport and that the carport has not yet been repaired. The Tenant is seeking an Order requiring the Landlord to repair the carport. The Landlord stated that she intends to repair or remove the carport.

The Tenant is seeking an Order requiring the Landlord to clean and repair the gutter system in the rental unit. The Landlord stated that she intends to repair the gutter system. The Tenant submitted no evidence that shows that a gutter system is required by health, safety and housing standards or that the state of the gutter system renders the unit unsuitable for occupation.

The Tenant is seeking an Order requiring the Landlord to repair two leaking faucets. The Landlord stated that she intends to repair the faucets. The Tenant submitted no evidence that shows that the faucets fail to meet a specific health, safety and housing standard, or that they render the unit unsuitable for occupation.

The Tenant is seeking an Order requiring the Landlord to remove mould from the basement of the rental unit. The Landlord stated that she has had a repairman look at the mould in the basement area and that individual will be removing the mould. The Tenant submitted no evidence to show that the mould is hazardous.

The Tenant is seeking an Order requiring the Landlord to replace an exterior light fixture. The Landlord stated that she intends to repair the light. The Tenant submitted no evidence to show that the light contravenes health or safety standards.

The Tenant is seeking an Order requiring the Landlord to secure the toilet to the floor. The Landlord stated that she intends to secure the toilet. The Tenant submitted no evidence to show that the condition of the toilet contravenes health or safety standards.

The Tenant is seeking an Order requiring the Landlord to repair the plumbing system to eliminate the banging that occurs when the taps are turned on. The Landlord stated that she intends to remedy this problem. The Tenant submitted no evidence to show that the banging contravenes health or safety standards.

### Analysis

There is a general legal principle that places the burden of proving that damage or loss occurred on the person who is claiming compensation for damages or loss. In these circumstances, the burden of proof rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to show that the tenancy included exclusive use of the basement area. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that

she was told the property would be removed from the basement or that refutes the Landlord's testimony that the Tenant was never told the property would be removed from the basement. In the absence of evidence that clearly establishes that the Tenant was promised exclusive use of the basement as a term of the tenancy, I dismiss the Tenant's claim for financial compensation for being denied exclusive access to the basement and I decline to order the Landlord to provide the Tenant with exclusive access to the basement.

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 testimony of the Tenant and in the absence of evidence to the contrary, I find that the smoke detector in the basement is not working. As the Landlord acknowledged that smoke detectors are essential safety devices, I order the Landlord to repair or replace the smoke detector in the basement, pursuant to section 32(1) of the *Act*. In the event that the smoke detector is not repaired or replaced by October 31, 2012, I authorize the Tenant to reduce her rent by \$25.00, effective November 01, 2012, and to reduce each subsequent rent payment by this amount until such time as the smoke detector is repaired.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the heating ducts that provide heat to the main living area of the rental unit are not working. I find that it is commonly understood that inadequate heat can render a rental unit unsuitable for occupation. I therefore order the Landlord to have the electric forced air heating ducts inspected by an electrician. In the event that the electrician determines that the main living area is being adequately heated by these heating ducts, I order the Landlord to provide the Tenant with a report from the electrician which confirms the units are functioning properly. In the event that the electrician determines that the main living area is not being adequately heated by these heating ducts, I order the Landlord to repair the heating ducts or to provide the Tenant with a reasonable method of heating the main living area.

In the event that the aforementioned inspection report is not provided to the Tenant by October 31, 2012 or the Tenant is not provided with a reasonable means of heating the main living area by October 31, 2012, I authorize the Tenant to reduce her rent by \$50.00, effective November 01, 2012, and to reduce each subsequent rent payment by this amount until such time as the report is provided or a reasonable heat source is provided.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the sunroom is not heated. I find that it is commonly understood that inadequate heat can render a rental unit unsuitable for occupation. I therefore order the Landlord to provide the Tenant with a method of heating the sunroom, which could include a free standing heating unit that is approved for use in Canada. In the

event that a heat source for the sunroom is not provided to the Tenant by October 31, 2012, I authorize the Tenant to reduce her rent by \$50.00, effective November 01, 2012, and to reduce each subsequent rent payment by this amount until such time as heat source is provided.

I find that the Tenant does not have the right to demand a specific type of heat source, provided the heat source complies with housing and safety standards. In the event that the Tenant finds the heat source too expensive or she considers it unsafe, the Tenant can elect to end the tenancy or to limit the use of the heat source.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Landlord promised the Tenant that the carport would be repaired. I therefore find that this carport is a facility that was provided as a term of this tenancy agreement and I order the Landlord to repair the carport. In the event that the carport is not repaired by October 31, 2012, I authorize the Tenant to reduce her rent by \$50.00, effective November 01, 2012, and to reduce each subsequent rent payment by this amount until such time as the carport is repaired.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord is obligated to repair the gutter system, pursuant to section 32(1) of the *Act*, as the Tenant has not established that the gutter system makes the rental unit unsuitable for occupation or that it does not comply with health, safety and housing standards required by law. On the basis of the testimony of the Landlord, I find that the Landlord intends to clean and repair the gutter system. I make no specific Order in this regard, however, as I am unable to conclude that the Landlord is required to make these repairs pursuant to section 32(1) of the *Act*, or that the repairs were promised at the start of the tenancy.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord is obligated to repair two leaking faucets, pursuant to section 32(1) of the *Act*, as the Tenant has not established that the faucets render the rental unit unsuitable for occupation or that they do not comply with health, safety and housing standards required by law. On the basis of the testimony of the Landlord, I find that the Landlord intends to repair the faucets. I make no specific Order in this regard, however, as I am unable to conclude that the Landlord is required to make these repairs pursuant to section 32(1) of the *Act*, or that the repairs were promised at the start of the tenancy.

I find that the Tenants submitted insufficient evidence to establish that the mould observed in the rental unit represents a health hazard. In reaching this conclusion, I was heavily influenced by the absence of scientific or medical evidence that establishes the mould in the rental unit constituted a health hazard to humans or animals. Mould is relatively common in homes and only some types of moulds represent a health hazard. In reaching this conclusion, I was influenced, to a lesser degree, by the photographs that were submitted in evidence, which do not demonstrate that there is an excessive amount of mould in the rental unit.

On the basis of the testimony of the Landlord, I find that the Landlord intends to remove the mould in the basement. I make no specific Order in this regard, however, as I am unable to conclude that the Landlord is required to remove the mould, pursuant to section 32(1) of the *Act*, or that the Landlord promised to remove the mould at the start of the tenancy.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord is obligated to replace an exterior light fixture, pursuant to section 32(1) of the *Act*, as the Tenant has not established that the light fixture contravenes health, safety or housing standards. On the basis of the testimony of the Landlord, I find that the Landlord intends to repair the light fixture. I make no specific Order in this regard, however, as I am unable to conclude that the Landlord is required to repair the light pursuant to section 32(1) of the *Act*, or that the repair was promised at the start of the tenancy.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord is obligated to repair the toilet, pursuant to section 32(1) of the *Act*, as the Tenant has not established that the toilet contravenes health, safety or housing standards. On the basis of the testimony of the Landlord, I find that the Landlord intends to repair the toilet. I make no specific Order in this regard, however, as I am unable to conclude that the Landlord is required to make this repair pursuant to section 32(1) of the *Act*, or that the repair was promised at the start of the tenancy.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord is obligated to ensure the pipes do not bang when the taps are turned on, pursuant to section 32(1) of the *Act*, as the Tenant has not established that the problem contravenes health, safety or housing standards. On the basis of the testimony of the Landlord, I find that the Landlord intends to repair the plumbing. I make no specific Order in this regard, however, as I am unable to conclude that the Landlord is required to make this repair pursuant to section 32(1) of the *Act*, or that the repair was promised at the start of the tenancy.

### Conclusion

I find that the Tenant's Application for Dispute Resolution has some merit and I authorize her to reduce one monthly rent payment by \$50.00, in full compensation for the cost of filing this Application for Dispute Resolution.

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: October 02, 2012.

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Residential Tenancy Branch