



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RP, RR, OLC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make repairs, for an order allowing a reduction in rent, for an order requiring the landlord to comply with the Act, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issue-* At the outset of the hearing, the landlord contended that she had not received the tenants' evidence, despite the package being sent by registered mail on December 27, 2012. The landlord explained that she had not checked her mail in at least a week and had not received the notice for the registered mail. The landlord agreed the hearing could proceed.

I note that during the course of the hearing, however, the landlord made a specific reference to one of the tenant's photographs, which called into question as to whether or not she had received the registered mail envelope containing the tenants' evidence.

The landlord did not submit any evidence.

### Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the Act, an order requiring the landlord to make repairs, for an order reducing their monthly rent until such repairs are made and to recover the filing fee?

### Background and Evidence

I heard undisputed testimony that this tenancy began on January 1, 2012, monthly rent is \$950.00 and the tenants paid a security deposit of \$475.00 at the beginning of the tenancy.

The rental unit is the lower suite of a house and the upper suite is rented by other tenants.

The tenants' relevant evidence included a condition inspection report, the tenancy agreement, email communication with the landlord, other communication with the landlord and photographs of the items said to need repair.

The tenants testified that since moving into the rental unit, they have repeatedly brought deficiencies to the landlord's attention. The tenants have issued written repair requests via email to the landlord and stated they have repeatedly asked the landlord to make repairs.

The tenants and landlord made the following submission in relation to repairs that are required to the unit:

#### *Bedroom door*

The tenants said that the door to the main bedroom needs replacing due to a large crack and that it was mentioned on the move-in condition inspection report that it would be replaced.

The landlord agreed that the door was cracked, but that it is still functional.

#### *Seal on the refrigerator door-*

The tenants submitted that the seal had cracked or pulled loose, causing a leakage of cold air and food spoilage. The tenant said it was necessary to apply duct tape to stop the cold air leak and that the landlord was notified in May 2012 that a problem had developed, with no results as of the present day.

The landlord submitted that the tenants were responsible for the cracked seal due to misuse.

#### *Corner kitchen cabinet door-*

The tenants said that in May 2012, they notified the landlord that the bottom hinge on the cabinet door had broken, leaving the door hanging by the top hinge, improperly.

The tenants said they notified the landlord in May 2012 about the issue, with no results as of the present date.

The landlord said the cabinet was an expensive model, with quality hardware, and that the breakage was from tenant misuse.

*Towel rack-*

The tenants said the towel rack was loose when they moved in and that eventually broke from the drywall. The tenant said that it appeared to have been broken in the past as she saw another wall anchor behind the front wall anchor.

The tenant said the landlord was notified in May 2012, with no results.

The landlord attributed the towel rack breakage to tenant misuse.

*Screens-*

The tenants said that the screens had become loose and that they had to tape them to prevent the tenant's cat from escaping and so that they could open the windows in the summer. The tenant said that this issue, however, was not a concern for the tenants.

The landlord said the screens becoming loose were due to tenant misuse.

The male tenant said that he reminded the landlord each month when he delivered the rent cheque of the repair requests.

*Other issues-*

*Hydro bills-*

The tenants also requested that the landlord be required to give them copies of the hydro bills prior to having to reimburse the landlord. In explanation, the tenants said that they discussed hydro bills for the residential property, at the beginning of the tenancy, and they agreed that the tenants would pay 1/3 of the hydro for the house, with the upper suite paying 2/3 of the bill.

The tenants said that the landlord has failed to give them copies of the hydro bills; instead she informs them of their percentage.

In response, the landlord said that she has not asked for a hydro payment since June 2012, and that she keeps the hydro bill in her name for insurance purposes.

*Pet damage deposit-*

The tenants said they informed the landlord at the move-in inspection that they did not have a pet, but that tenant MS would most likely be acquiring one during the tenancy.

The tenants said that the landlord said that she usually collects a pet damage deposit but that she would waive that requirement in this case.

The tenant did acquire a cat and the tenants did inform the landlord of the same, in August 2012. The tenant said that the landlord is now demanding a pet damage deposit, after they filed for dispute resolution.

### Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

The Act requires a landlord to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation.

I accept the undisputed evidence of the tenants that the tenants made repair requests to the landlord, and I find the landlord has not taken sufficient action necessary to repair the bedroom door, the refrigerator seal, the kitchen cabinet door and the towel rack. I find the landlord failed to submit proof that the seal, the cabinet door and the towel rack were damaged by the tenants.

I find this insufficient response by the landlord has caused the tenants to have suffered a loss of use and enjoyment of the rental unit, causing a diminished value of the tenancy.

I find that the landlord avoided her responsibility to the tenants and that it was necessary for the tenants to file an application for dispute resolution, in December 2012.

I find the only remedy available to the tenants is a reduction in rent and I therefore grant their application seeking such an order.

Residential Tenancy Branch Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As I have found that the value of the tenancy has been diminished through the landlord's ongoing failure to make necessary repairs, I find a reasonable amount for a rent reduction due to the diminished value to be \$125.00 per month. I find the diminished value should be granted retroactively for 2 months, from December 2012, when the tenants filed their application, through the latest rent payment, January 2013.

I have not ordered a retroactive rent reduction earlier than December 2012, as the tenants failed to mitigate their loss, as is their requirement under section 7 of the Act, by

filing an application for dispute resolution at the time the landlord first failed to address the repair requests.

I therefore order the landlord to compensate the tenants in the amount of \$125.00 per month retroactively for 2 months, for a total amount of \$250.00. This amount may be deducted from the reduced rate of rent as described below.

I also order that the landlord complete all necessary repairs to the bedroom door, the refrigerator seal, the kitchen cabinet door and the towel rack by January 31, 2013.

I also find that should the landlord fail to fully repair bedroom door, the refrigerator seal, the kitchen cabinet door and the towel rack by January 31, 2013, I further authorize the tenants to reduce their future monthly rent obligation by \$125.00, or \$825.00 payable as monthly rent, until such time the repairs are completed in a good and workmanlike manner.

Upon completion of the repairs, the tenants will be obligated to resume payment of the full monthly rent starting the month following such occurrences. Example: if the landlord completes the repairs in a good and workmanlike manner by February 2, 2013, the tenants' rent for February 2013 is reduced by \$125.00; however the tenants would have to pay the full amount of rent payable, or \$950.00 for March 2013.

If the tenants are not satisfied with the repairs and continue to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that she has complied with this Decision and to allow the monthly rent to be returned to \$950.00.

I find the tenants' application had merit and I award them recovery of the filing fee of \$50.00.

Due to the above, pursuant to section 62 of the Act, I find the tenants have established a total monetary claim for \$300.00, comprised of a retroactive rent reduction of \$250.00 and recovery of the filing fee of \$50.00.

I allow the tenants to redeem the amount of their monetary claim of \$300.00 by deducting that amount from the next monthly rent payment.

As to the issue of the hydro bills, I find that the parties agreed that the tenants would be responsible for 1/3 of the hydro usage for the residential property and as such, I order that this is an enforceable term of the tenancy agreement.

I also order that the landlord submit to the tenants copies of the hydro billing statement with any request for reimbursement of their agreed share.

As to the landlord's request for a pet damage deposit, section 20 of the Act prohibits the collection of a pet damage deposit at any time other than when the landlord agrees that

the tenant may keep a pet. I find the evidence shows that the landlord was aware and agreed that the tenants could keep a pet at least by August 2012, and did not require a pet damage deposit. I therefore find the landlord is not now entitled to collect a pet damage deposit from the tenants.

### Conclusion

The tenants have been granted a retroactive reduction in rent, in the amount of \$250.00 and recovery of the filing fee, for a total of \$300.00 in monetary compensation.

The tenants are directed to withhold the amount of \$300.00 from their next monthly rent payment in satisfaction of their monetary award.

The landlord is ordered to complete the repairs as directed above, by January 31, 2013.

If the landlord fails to complete all such repairs by January 31, 2013, the tenants are authorized and directed to reduce their next monthly and subsequent rent payments by \$125.00 as a continuing reduction in rent until all repairs are completed in a good and workmanlike manner.

Should the tenancy end prior to the tenants being able to fully redeem their monetary award of \$300.00 by withholding or deducting from their monthly rent payments, the tenants may seek a monetary order by making such request of the Residential Tenancy Branch ("RTB").

The landlord is ordered to produce for the tenants any copy of a hydro bill when requesting reimbursement from the tenants.

The landlord is prohibited from requesting a pet damage deposit from the tenants for the pet the tenants now have in the rental unit.

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: January 13, 2013.

