



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, MNDC, RR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that he received the landlord's 10 Day Notice sent by the landlord by registered mail on March 2, 2013. The landlord confirmed that on March 13, 2013, he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on March 8, 2013. I am satisfied that the parties served one another with the above documents and their written evidence packages in accordance with the *Act*. As the tenant testified that he had not provided the landlord with copies of a series of photographs that he had recently submitted to the Residential Tenancy Branch (the RTB), I advised the parties at the hearing that I would not be taking this portion of the tenant's evidence into account in consideration of the tenant's application.

At the hearing, the landlord testified that on March 12, 2013, he accepted the tenant's \$2,000.00 payment of rent for February and March 2013. The landlord also testified that in late March 2013, he accepted the tenant's \$1,000.00 rent payment for April 2013. The landlord testified that as the tenant has paid all outstanding rent, he is no longer seeking an end to this tenancy on the basis of the 10 Day Notice. Under these circumstances, the landlord's 10 Day Notice is no longer in effect and the tenant's application to cancel that Notice is withdrawn. Although he did not specifically identify a

request for repairs or emergency repairs in his application, the tenant did apply for a reduction in rent until such time as repairs had been completed.

#### Issues(s) to be Decided

Is the tenant entitled to losses arising out of this tenancy? Is the tenant entitled to a reduction in rent arising out of the loss in value of his tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord? Should any other orders be issued regarding this tenancy?

#### Background and Evidence

The tenant first moved into the basement of this two unit rental building prior to 2011. When the upper level of this building became vacant, the tenant signed a one- year fixed term tenancy enabling him to reside in the upper level of the building as of March 1, 2011. When the initial term of this upper level tenancy ended, the tenancy continued as a periodic tenancy. Current monthly rent is set at \$1,000.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$500.00 security deposit paid on March 1, 2011.

The tenant applied for a monetary award of \$400.00. In his written evidence, confirmed by his sworn oral testimony, the tenant described the following two incidents which gave rise to his request for a \$400.00 monetary award:

1. The tenant contacted the landlord about problems he was encountering in his bathroom, requiring the removal of drywall, tiles, and replacement of the bathtub in his rental unit. The tenant obtained the landlord's approval to retain a contractor to repair the bathroom. The tenant purchased a Jacuzzi to replace the existing bathtub. The tenant entered into a sub-contract with the contractor, whereby the contractor would reimburse the tenant \$200.00 to tear out the existing drywall and tiles, so as to assist in the preparation of the contractor's work. The contractor subsequently refused to conduct this work because the landlord was unwilling to pay for his services in accordance with the contractor's desired payment schedule. By this time, the tenant had already removed drywall and tiles in accordance with his agreement with the contractor. The tenant requested a monetary award of \$200.00 to compensate him for the work he had done to prepare for the bathroom repairs.
2. The tenant also requested a \$200.00 monetary award for his loss of wages when he decided to stay home on December 31, 2012, so as to be present when the landlord's contractor attended the rental unit to conduct repairs. The landlord testified that his contractor was only supposed to inspect the rental unit on that date to determine what needed repair.

At the hearing, the tenant testified that he has been without a functioning bathtub for four months. However, he confirmed that he has been able to use a functioning shower during this period. He maintained that the landlord has been unwilling to repair his bathroom, despite being advised of extensive problems that the tenant maintains require the removal of the bathtub because it is attached to a concrete base. The tenant said that there is extensive black mould in the bathroom and that the landlord is being unreasonable in maintaining that the repairs can be conducted without replacing mould-infested areas of the bathroom and the bathtub itself. The tenant also cited problems with the sundeck, which he claimed the landlord has been remiss in repairing.

The landlord testified that the mould is actually discolouration, typical of a rental home of this age. He expressed a willingness to repair the bathroom, but noted that the tenant has not been co-operative in allowing him or his handyman to access the rental unit and conduct these repairs. The landlord said that the bathtub does not need replacing.

At the hearing, the tenant called a contractor who installs bathrooms as a witness. This contractor has inspected the premises and provided undisputed testimony regarding the deficiencies in the existing bathtub/shower arrangement in this rental unit. He testified that this is a "drop-in style bathtub" that was never designed to accommodate a shower. As it has no "lip" on the bathtub, the sub-floor has been exposed to leakage. He said that there has been extensive mould and mildew or rot. He described the sub-floor in the bathtub area as so exposed to water damage that it is "almost powder-like." He gave undisputed testimony that the bathtub would have to be removed, likely in pieces because it is cemented into place. He testified that the new bathtub would have to be a proper bathtub that could accommodate a shower. He said that the floor joists may also have been damaged by the water and it could be dangerous to install a new bathtub over damaged floor joists if that is the case.

After listening to the bathroom contractor's sworn testimony, the landlord did not dispute the claim that the bathtub will need to be removed and replaced. However, the landlord reiterated the information he provided in his written evidence that he was under no obligation to replace the existing bathtub with a Jacuzzi, the tenant's desired bathroom fixture. The landlord noted that this would require additional wiring, an upgraded electrical system, and perhaps a reversal of the direction of flow of the drains. The landlord committed to commence repairs of the bathroom and replacement of the bathtub with a proper substitute bathtub within a week to 10 days of the hearing. He also said that he would have a licensed plumber do any plumbing work required in these repairs and that he will have this individual attend within the next 2-3 days to assess the extent of the work required.

At the hearing, the tenant said that he still had all of the material removed from the bathroom outside on the rental property. He said that he would incur tipping fees at the disposal site to remove these items from the property. The landlord recognized that the tenant had performed some work on the premises to remove the damaged drywall and tiles and still needed to remove these items from the property. The landlord testified that he would not object to the tenant's claim for a \$200.00 payment to the tenant if the tenant agreed to take the existing items in the yard to the local disposal site as well as anything else that has to be removed from the rental unit (including the old bathtub). The tenant said that it was likely that the tipping charge would exceed the \$200.00 payment offered by the landlord if the tenant were responsible for the disposal of the material still in the bathroom that needs to be removed to conduct these repairs.

#### Analysis – Tenant's Application for a Monetary Order

Based on the evidence before me, I find that the landlord has agreed to the tenant's request for a monetary award in the amount of \$200.00 to compensate the tenant for work that he has performed on the rental unit to remove damaged portions of the bathroom from the rental unit. I issue a monetary award in the tenant's favour in the amount of \$200.00, an amount which is designed to compensate the tenant for the work he has already conducted to remove material from the bathroom **and** to remove this material from the rental property to the local disposal site. In addition, I order that the landlord reimburse the tenant for the paid invoice that the tenant submits from the local disposal site if he incurs costs in discarding the material that he has already removed from the bathroom of this rental unit.

I emphasize that the above order is limited to the tenant's proper disposal of those materials that he has removed from the rental unit **before this hearing**. I find that the landlord is responsible for all costs associated with the proper removal and disposal of any additional materials that need to be removed from the bathroom in order to conduct the repairs the landlord and his contractors are undertaking subsequent to this hearing.

I dismiss without leave to reapply the tenant's application for a monetary award to reimburse him for lost wages resulting from his decision to remain at the rental unit on December 31, 2012, in anticipation of repair work being conducted by the landlord and/or his contractor that day. I find that the decision to take this time off work was the tenant's and the landlord should not be held in any way responsible for such a claim.

I have also considered the tenant's claim for a retroactive reduction in rent for the loss of services and facilities (i.e., a functioning bathtub) that the landlord committed to provide as part of this tenancy for what the tenant described as a four-month period. Although I recognize that the tenant has experienced some loss in the value of his

tenancy resulting from his lack of a bathtub, the tenant did confirm that he has continued to use the shower stall throughout this period. I find that the tenant's efforts to locate a contractor to install a used Jacuzzi of his choice, while seemingly well-intentioned, has contributed to a complication of circumstances that has led to delay in getting necessary repairs undertaken by the landlord. I also find an element of merit to the landlord's testimony that the tenant's removal of damaged material from the bathroom prior to the commencement of repairs by a contractor may have led to additional damage that could have been avoided had this been undertaken in one continuous process by a qualified contractor. In addition, there is at least some evidence before me that the tenant has not been as co-operative as would have been desired in order to obtain repairs.

Having considered these factors, I find that the tenant is entitled to an admittedly nominal monthly rent reduction of \$30.00 for a two month period. I limit the amount of this rent reduction to two months. I do because I find that the landlord was entitled to a period of assessment and review of options regarding the request for bathroom repairs before the tenant was entitled to a rent reduction. I also find that the tenant's actions, including his desire to obtain an upgraded Jacuzzi in place of a similar replacement bathtub, has contributed to a certain extent to the delays that have occurred.

As the tenant has been partially successful in his application, I allow him to recover his \$50.00 filing fee from the landlord.

#### Analysis – Order Regarding Repairs

At the hearing, the landlord expressed concern about ensuring that he and his contractor/handyman/plumber have access to the rental unit to conduct the repairs as this has been a problem in the past. The landlord agreed to provide the tenant with 24 hours written notice of when he is going to need access to the rental unit to commence the repair process. For his part, the landlord provided the tenant with his email address so that the tenant could send his confirmation that it was alright for the landlord to commence repairs on requested dates.

Although the landlord has committed to undertake repairs promptly and in order to avoid future potential problems with this tenancy, I issue the following orders to ensure that this commitment is implemented.

I order the landlord to provide at least 24 hours written notice of times and dates when he will require access to the rental unit in order to conduct repairs to the bathroom of the rental unit.

I order the tenant to confirm by email to the email address given to him by the landlord at the hearing that he will provide access to the rental unit for the purpose of conducting repairs to the bathroom of the rental unit.

I order the landlord to commence work to repair the bathroom of the rental unit by April 14, 2013.

If the landlord's repairs to the bathroom of the rental unit, including the replacement of damaged sub-flooring and floor joists that present an unacceptable health or safety risk, has not been completed by May 1, 2013, I order the tenant to reduce his monthly rent by an additional \$100.00 for May 2013 and any subsequent month until such time as these repairs have been completed. In that event, I order that the tenant's monthly rent reverts to the regularly scheduled monthly rent during the month after the bathroom repairs have been completed.

#### Conclusion

The tenant's application to cancel the landlord's 10 Day Notice is withdrawn. This tenancy continues.

I order the landlord to commence work to repair the bathroom of the rental unit by April 14, 2013. I order the landlord to provide at least 24 hours written notice of times and dates when he will require access to the rental unit in order to conduct repairs to the bathroom of the rental unit. I order the tenant to confirm by email to the email address given to him by the landlord at the hearing that he will provide access to the rental unit for the purpose of conducting repairs to the bathroom of the rental unit.

I issue a monetary award in the tenant's favour in the amount of \$310.00 (i.e., \$200.00 for losses incurred; \$60.00 for reduction of rent due to loss in value of tenancy; \$50.00 recovery of filing fee). In order to implement this monetary award, I order the tenant to withhold \$310.00 from his May 2013 rental payment.

I order the tenant to reduce his monthly rent by an additional \$100.00 for May 2013 and any subsequent month until such time as the bathroom repairs ordered in this decision have been completed in the event that the landlord's repairs to the bathroom of the rental unit, including the replacement of damaged sub-flooring and floor joists, have not been completed by May 1, 2013. In that event, the tenant's monthly rent reverts to the regularly scheduled monthly rent during the month after the bathroom repairs have been completed.

I order the landlord to reimburse the tenant for the paid invoice the tenant submits from the local disposal site if the tenant incurs costs in discarding the material that he has already removed from the bathroom of this 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: April 05, 2013

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Residential Tenancy Branch