



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes      MNR, OLC, RP, RR, O

This hearing was convened as a result of the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for the following Orders:

1. A Monetary Order for cost of emergency repairs;
2. An Order that the Landlord comply with the Act, regulation, or tenancy agreement;
3. An Order that the Landlord make repairs to the unit, site or property;
4. An Order allowing the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided;
5. Other:
  - a. Fix electrical,
  - b. Flood damage (mold)
  - c. Provide me with mail keys,
  - d. Paint, and
  - e. Stop taking pictures of my guests harassment

(Reproduced as written)

The Tenant appeared on her own behalf. The Landlord did not attend.

The hearing process was explained and the Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

As the Landlord's agent and manager, S.L., did not attend the hearing, service of the Tenant's Application for Dispute Resolution, filed August 28, 2014, and Notice of Hearing and supporting evidence (collectively referred to as the "Application Materials") was considered.

The Tenant testified that she personally served the Application Materials on the Landlord's agent/manager, S.L., on August 28, 2014 at the Holiday Inn. She testified that two witnesses, M.T. and M.G. observed her serve S.L. Those witnesses were not called.

The Tenant confirmed that she did not wish to seek an order that the Landlord stop taking pictures of her guests.

### Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for the cost of emergency repairs?
2. Is the Tenant entitled to an Order that the Landlord comply with the Act, regulation, or tenancy agreement;
3. Is the Tenant entitled to an Order that the Landlord make repairs to the unit, site or property, including fixing the electrical, repairing flood damage, and painting?
4. Is the Tenant entitled to an Order allowing the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided?
5. Is the Tenant entitled to an Order that the Landlord provide her with mail keys?
6. Is the Tenant entitled to an Order that the landlord cease photographing her guests?

### Background and Evidence

The Tenant testified that the tenancy began July 1, 2014 for a year-long fixed term tenancy. A copy of the Tenancy Agreement was also provided in evidence by the Tenant. Rent was payable in the amount of \$1,000.00 per month payable on the 1<sup>st</sup> of the month.

The Tenant testified that she met the Landlord, who is also the owner of the rental unit, N.V., once in the parking lot of the rental unit. He instructed her to deal directly with S.L. on all matters relating to the rental unit and to pay rent directly to S.L.

The Tenant provided a \$500.00 security deposit. The Tenant testified that she paid the security deposit and the first month's rent in cash to S.L. She further testified that she provided 11 post-dated cheques for the balance of the rental term. She testified that her August and September rent cheques, payable to S.L., have yet to be cashed by S.L.

The Tenant testified that approximately two days after moving into the rental unit, the toilet in the upstairs unit flooded and caused water damage to her ceiling. The Tenant communicated with S.L. regarding the damage and S.L. assured her it would be repaired. She introduced a letter, dated July 22, 2014, wherein she wrote to S.L. about this emergency repair (as well as other issues raised in this application).

The Tenant also introduced in evidence a letter from N.S., a project manager from a remediation company, which confirmed the remediation company attended the rental unit on June 30<sup>th</sup>. In this letter, N.S. writes that the flood occurred approximately 1 week earlier and damaged the kitchen and living room ceiling of the Tenant's rental unit. N.S. writes that to be repaired properly, the damaged tape joints would need to be dug out and removed, then replaced, mudded and finished. As the ceiling is textured, N.S. recommends that the entire ceiling be retextured to maintain a consistent appearance. N.S. writes that he performed surface readings with a moisture meter and did not detect any elevated moisture levels but recommends that the ceiling be opened up in the damaged areas to expose any moisture that could still potentially be trapped behind the drywall. N.S. further writes that he is not able to determine whether mold is present, but recommends removing the drywall in the affected area to determine the extent or potential for mold growth.

The Tenant introduced a further letter, which was written by her to S.L. and is undated, but appears to follow the July 22, 2014 letter. In this letter she reiterates her concerns that the emergency electrical repairs and flood damage to her rental unit have not been completed.

The Tenant failed to provide any evidence of the estimated cost of the emergency repairs.

The Tenant testified that prior to moving into the rental unit, S.L. assured her that the unit would be repainted. She testified that contrary to this assurance, the unit was not

painted. The Tenant provided in evidence copies of photos of the unit which she says depict the areas requiring painting. Those photos were not clear as they had been faxed. During the hearing, I directed the Tenant to provide readable copies of the photos within two weeks of the date of the hearing, namely October 6, 2014, failing which I advised her I would dismiss her claim for an Order that the Landlord paint her rental unit.

### Analysis

Section 33 of the Act provides as follows:

#### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The Tenant conceded that she has not yet attended to the repairs, and as such does not have an account or receipts for such repairs. Accordingly, I dismiss the Tenant's Application for an Order that she be reimbursed the cost of emergency repairs.

Section 62(3) of the Act provides as follows:

**62** (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 32 of the Act provides as follows:

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Tenant did not tender any evidence of required electrical repairs; accordingly, I dismiss the Tenant's application for an Order that the Landlord make emergency electrical repairs.

I accept the undisputed evidence of the Tenant, as well as the letter from the remediation company that the ceiling in the rental unit requires repairs. Accordingly, I Order that the Landlord, by no later than October 31, 2014, make the repairs suggested by N.S. and in particular:

1. Remove the stained/damaged drywall in the affected areas to provides inspection holes and to determine what the extent (if any) of damage or mold is inside the ceiling;
2. Open the ceiling in the damaged areas to expone any moisture;
3. Replace insulation if necessary;
4. Dig out and remove tape joints, replace, mud and finish;
5. Retexture the entire textured ceiling surface in the rental unit, including the hole in the kitchen drop-down ceiling;

The Tenant sought an Order that the Landlord provide her with a set of keys to the mailbox. I accept the Tenant's undisputed evidence that the Landlord has refused to provide her with a set of keys to the mailbox.

*Residential Tenancy Policy Guideline 1. Landlord & Tenant—Responsibility for Residential Premises* provides as follows:

**KEYS**

The landlord must give each tenant at least one set of keys for the rental nit, main doors, mailbox and any other common areas under the landlord's control, such as recreational or laundry rooms...

Accordingly, I Order the Landlord to provide the Tenant with a set of keys to her mailbox by no later than October 31, 2014.

Section 65(1) of the Act provides as follows:

**Director's orders: breach of Act, regulations or tenancy agreement**

- 65** (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Pursuant to section 65(1), and commencing November 1, 2014, I Order that the Tenant be permitted to reduce her monthly rent as follows:

1. by \$500.00 per month until such time as the Landlord completes the repairs to the ceiling as ordered in this my decision; and
2. by a further \$500.00 per month until such time as the Landlord provides her with a set of mail keys.

If the Landlord fails to comply, the Tenant is at liberty to apply for further Orders.

### Conclusion

1. The Tenant's Application for an Order that she be reimbursed the cost of emergency repairs is dismissed.
2. The Landlord shall, by no later than October 31, 2014, make the following repairs to the rental unit ceiling:
  - a. Remove the stained/damaged drywall in the affected areas to provides inspection holes and to determine what the extent (if any) of damage or mold is inside the ceiling;
  - b. Open the ceiling in the damaged areas to expose any moisture;
  - c. Replace insulation if necessary;
  - d. Dig out and remove tape joints, replace, mud and finish;
  - e. Retexture the entire textured ceiling surface in the rental unit, including the hole in the kitchen drop-down ceiling;
3. The Landlord shall, by no later than October 31, 2014, provide the Tenant with a set of keys to her mailbox.
4. Commencing November 1, 2014, the Tenant is be permitted to reduce her monthly rent as follows:

- a. by \$500.00 per month until such time as the Landlord completes the repairs to the ceiling as ordered in this my decision; and
- b. by \$500.00 per month until such time as the Landlord provides her with a set of mail keys.

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: September 23, 2014

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Residential Tenancy Branch



