



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HORST DAMMHOLZ REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNR OPR RP ERP RR PSF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To do emergency and necessary repairs pursuant to sections 32 and 33;
- b) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
- c) For a monetary order as reimbursement for repairs;
- d) To recover the filing fee for this application.

Service:

The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that the landlord has not done necessary repair and maintenance contrary to sections 32 and 33 and if so, is the tenant entitled to compensation or a rent rebate and to recover the filing fee for this application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced on June 16, 2014 on a fixed term lease to June 15, 2015, rent is \$2300 a month and a security deposit of \$1150 was paid. The landlord served a Notice to End Tenancy on August 21, 2014 for unpaid rent but the tenant paid the rent on August 27, 2014 by email withdrawal and the landlord accepted the rent without providing a receipt showing that they were limiting the acceptance for 'use and occupancy only' and not reinstating the tenancy. The tenant assumed that the tenancy had been reinstated by his payment of the outstanding rent in full.

The parties agree that there was a Condition Inspection Report done at move-in and the tenant listed various items that he considered deficient such as a missing shelf and trim on the refrigerator, painting and old flooring on the kitchen. The parties agree that the landlord did not promise on the form to replace or repair these items but the landlord said the owner wanted the tenant to be content so they painted inside and have considered replacing the refrigerator because the missing shelf cannot be replaced; the landlord emphasized that the refrigerator is in fine working condition and it is only a door shelf that is missing so the owner has not considered it a priority since the tenant has continued to raise other items that he wants done. Again on the flooring, the landlord said they had considered replacing the lino but the owner has not given final approval, possibly because of the other demands and this dispute filed with the Residential Tenancy Branch. The landlord said the floor is old but the only problem he has noted is that a few inches of separation at the transition in the lino. The tenant said there were holes in the floor and referred to photographs which the landlord said he had not received; they were not received for this hearing either.

The tenant also claimed that the air quality in the house was poor and there were some high spots of electro magnetic resonance measured by him and put on U tube. He said the house made him sick as he noticed he was nauseous when the doors and windows were closed but he felt fine when they were open or he was living elsewhere. He said he is living in the United States at the moment and hopes to sublet the house but does not want any other family to be ill. The landlord said this is a regular home in a regular residential neighbourhood, there is no heavy machinery nearby and he has heard of no similar complaints from tenants or other neighbours since they rented this home in 2005. He said the tenant inspected the home before signing the lease and completed the move-in report so he would not be considered liable for pre-existing damage but the landlord never promised to repair or improve any items. However, he agreed the landlord had wanted to keep the tenant happy and had agreed to some things after emails from the tenant; they did repaint the interior of the home and may replace the refrigerator and flooring in the future but do not consider it a priority to replace a refrigerator that is working fine or to replace the kitchen floor although it is older.

The tenant said that he wants to ensure that there are no issues if he subleases. He claims a rent rebate of \$1150 for items not attended to but promised. In evidence is a Notice to End Tenancy and some emails from the tenant to the landlord. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As explained to the parties in the hearing, the onus is on the applicant to prove on a balance of probabilities his claim. In respect to the Notice to End Tenancy, I find that

the landlord waived the Notice by accepting subsequent rent without limiting the acceptance to 'use and occupancy only' and thereby reinstated the tenancy.

In respect to the rebate of rent and orders for maintenance sought by the tenant, I find Section 32 of the Act sets out 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.*

I find insufficient evidence that the landlord has not met his obligations as set out in section 32. There is no evidence that the tenancy agreement contained certain terms or promises that the landlord must replace a working refrigerator or replace a floor that is older. I find insufficient evidence that this older home does not comply with health, safety or housing standards or that it is unsuitable for occupation by a tenant. I find the landlord's evidence credible that the refrigerator works fine as the tenant did not dispute this and both agreed that the kitchen floor is older but useable and may be replaced at some point. While the tenant may want the home upgraded to sublease it, there is no requirement in the Act for the landlord to do this.

I find the landlord's evidence credible that former tenants since they rented the home in 2005 have never complained of illness because of air quality or other things connected to the home. Although it is unfortunate that this tenant finds it impacting his health, I find insufficient evidence provided by him to satisfy the onus of proving that the house does not satisfy the health, safety and housing standards required by law or that it is unsuitable for occupation by a tenant. I find him not entitled to a rebate of rent.

**Conclusion:**

I dismiss the Application of the tenant in its entirety without leave to reapply and find him not entitled to recover filing fees for this application.

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 22, 2014