



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lions Court Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNDC, RP, RR, FF

### Introduction

This hearing dealt with an application by the tenant for a repair order; a monetary order; and an order granting her a reduction of past and future rent for repairs, services or facilities agreed upon but not provided. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail actually received on September 4, 2015, the landlord did not appear. The tenant testified with the help of her friend, who translated for her and who was also a witness in the hearing.

### Issue(s) to be Decided

- Should a repair order be granted and, if so, on what terms?
- Should a monetary order be granted and, if so, in what amount?
- Should a rent reduction be ordered and, if so, on what terms?

### Background and Evidence

This one year fixed term tenancy commenced April 1, 2015. The monthly rent of \$1150.00 is due on the first day of the month. The tenant paid a security deposit of \$575.00. The rent includes the heat. The unit does not have air conditioning.

The previous tenant had left the rental unit in poor condition and it had to be extensively cleaned and repaired before it was ready for occupancy. As a result the tenant was not able to move into the unit until April 9, 2015. No rent reduction was given at that time for the delayed occupancy.

The rental unit is a one bedroom apartment, approximately 700 square feet in size. It is located on the second story of an older eleven story building on a busy urban street.

When the tenant agreed to rent this unit she was living in Spain. Her friend looked at it for her. Her friend testified that it was a beautiful day when she looked at the unit so she did not notice anything wrong with the windows.

An inspection was conducted on April 12. The landlord asked the tenant to list all required repairs in an e-mail which she did. From the very beginning of this tenancy the tenant has identified a problem with the living room and bedroom windows. She has written to the landlord on many occasions about the windows. The landlord did promise to fix them. In an e-mail to the tenant dated August 4 the landlord said: "Tim will try and seal the window before the cold comes." As of the date of the hearing nothing had been done.

The windows are made of aluminum and they slide horizontally on tracks. The problem is that the windows do not sit square on the track or slide evenly on the tracks so when the top of the window is closed tight there is a half inch gap at the bottom.

The fact that the windows do not shut completely poses two problems for the tenant:

- The apartment faces a very busy street and the tenant cannot shut out traffic noise.
- Now that it is the cooler time of year, the tenant cannot shut out the cold.

The tenant testified that the bedroom window is worse than the living room window.

### Analysis

The rent for April 2015 should have been pro-rated as the tenant was not able to move into the unit until April 9. The tenant should have paid rent in the amount of \$805.00 (\$38.33 X 21 days) for April. Accordingly, I award the tenant the sum of \$345.00 for the overpayment of April rent.

Section 32(1) of the *Residential Tenancy Act* states that a landlord must 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.

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

In Canada, no matter where you live, a home must have windows that shut to be suitable for occupation. This unit does not meet that standard.

The landlords are ordered to repair the windows in such a manner that they can still be opened and closed as desired but they close completely when shut.

The negative impact of having windows that do not close completely, or the reduction in value of the tenancy, is less in the warmer seasons of the year than the cooler, particularly since this unit does not have air conditioning. Accordingly, I find that for the period April to August the

reduction in value of the tenancy is 7.5%, or \$86.25 per month; and from September to March the reduction in value is 10%, or \$115.00 per month.

Until the repair is completed the tenant may deduct from each monthly rent payment the amount set out above, according to the month for which the rent is being paid. This deduction will continue until the tenant agrees that the repair has been satisfactorily completed or until an arbitrator, on application by the landlord, orders that the repair has been satisfactorily completed.

The tenant is also entitled to reduction in past rent paid for the reduction in value of the tenancy. As the tenant will only pay a pro-rated rent for April the reduction for that month should also be pro-rated. For April, the reduction in rent should be \$60.00. I award the tenant the sum of \$750.00 for the reduction in the value of this tenancy for the period of April 1, 2015 to November 30, 2015, calculated as follows: April @ \$60.00; May, June, July and August @\$86.25 per month; and September, October and November @ \$115.00 per month.

Finally, as the tenant was substantially successful on her application she is entitled to reimbursement from the landlord of the \$50.00 fee she paid to file her application.

In summary I find that the tenant has established a total monetary claim of \$1145.00 comprised of \$345.00 reimbursement for the overpayment of April rent; compensation for the reduced value of the tenancy in the amount of \$750.00; and the \$50.00 fee paid by the tenant for this application. Pursuant to section 72 this amount may be deducted from the rent as it becomes due until the entire amount has been paid.

### Conclusion

- a. A repair order has been made.
- b. A rent reduction has been granted to the tenant.
- c. A monetary order has been made in favour of the tenant.

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: November 18, 2015

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Residential Tenancy Branch

