



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, ERP, RR, MNDC

### Introduction

The tenant applies for repair orders, a rent reduction and, by amendment, a monetary award of damages. She claims a list of ailments in the rental unit encompassing leaking pipes and sinks, exposed electrical wiring and unusable plugs, a leaking washer, cracks in the walls and ceiling, a faulty dryer plug in, a basement septic tank failure and leakage, unfinished interior work in a bathroom and laundry room and mould in a bathroom.

By the time of hearing, the tenant had made the decision to move to other accommodation. She has given her notice to vacate the premises on April 1, 2016. In this event, neither repair orders nor a rent reduction would be appropriate remedies. Her monetary claim is the central issue.

Both parties attended the hearing, the landlord by its representatives, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the state of the premises is as alleged by the tenant? If so, has the landlord failed in its duty to maintain reasonably habitable premises or in its duty to attend to repairs in a timely fashion? If not, has the tenant suffered damage or loss and if so, what is the appropriate compensation for that damage or loss?

### Background and Evidence

The rental unit is a four bedroom house.

The tenancy started in October 2012. The tenant and her ex-partner were introduced to the rental unit by his grandfather Mr. E.J., who was then and still is a handyman for the landlord property management company.

The tenant's ex-partner left the home in March 2015 on less than cordial terms. The tenant says he has entered into a peace bond not to come near her or contact her directly or indirectly.

The monthly rent is presently \$1234.00, due on the first of each month. The rent for March 2016 has been paid.

The landlord holds a \$600.00 security deposit. The landlord recently discovered that the tenant had a pet cat or cats and demanded a pet damage deposit but the tenant has declined to pay it, arguing she had a cat from the inception of this tenancy.

The tenant testifies that the problems with the home started November 23, 2015. She detected a rotten egg smell and worried it was a gas leak. A gas company man came to investigate. He found no gas leak but told her that there was water in the basement and that she should call a plumber.

The tenant notified the landlord. A plumber was dispatched the same day. He discovered that the septic tank was leaking. He told her not to use her washer and to limit her water use if she smelled anything until a repair could be done.

The septic tank is an in-ground tank located in the basement bathroom, under the sink. It receives all the sewage and grey water from the home. It has a pump that pumps the grey water and sewage up to street level where it runs into the municipal works. As it turned out, pump in the septic tank had failed or was failing.

When the plumber attended, he found the septic tank lid to be covered with cat feces. He took a photo which the landlord presented as evidence. The plumber declined to investigate further until the area had been cleaned by the tenant.

On November 27, the landlord informed the tenant that she'd have to clean up the septic tank area before the plumber would come back.

The tenant was able to clean the area by December 2. There is some disagreement about when the landlord or the plumber was informed but on December 8 there was

communication between the parties and the plumber re-attended on December 9 and diagnosed the problem.

The plumber needed to order parts. The work was finally completed and the septic tank was returned to full working order on December 22, 2015.

The next day, the tenant wrote the landlord listing other defects with the rental unit;

- Sewage water had soaked into the walls from the septic leak,
- Ceiling boards in the downstairs were rotten,
- The electrical service was not to code, with hazardous wiring and faulty plugs,
- The dryer did not work properly, randomly shutting off,
- There was a musky odour in the basement caused by mould,
- Repairs were required in a bedroom; a light needed to be fixed and a carpet installed after being removed because of mould.

The landlord responded by letter the next day, December 24. In regard to repairs to a bedroom, it noted that no repairs had been agreed to be done on the move-in condition inspection report. In regard to the electrical work, it claimed that the electrical was to code as shown by the house insurance and that it would be reviewed or determined again when the insurance came up for renewal. For all other items it claimed that the tenant's December 23 letter was the first notice it had had of any of the items complained about and that it would either investigate or send a repair person.

At about the same time the tenant informed the landlord that the septic leak had caused damage in the basement bathroom. The landlord immediately sent a worker.

It was determined that the septic leak had infiltrated the linoleum and the base of the walls. As a result, the linoleum was ripped up and the saturated drywall was removed and replaced.

To date, the room has been drywalled but not painted and the concrete flooring has not been covered. The tenant says it should have been done. The landlord says it was not necessary because the room, though a bathroom was in very poor condition at move-in and was agreed to be used as a storage room, thus its finish and flooring are not important.

In response, the tenant agrees the lower bathroom was to be used as a storage area.

Following the landlord's letter of December 24, the landlord's workman Mr. R.M. attended to assess the situation and start work.

The tenant says there were workmen at her door often over the following month attending to the items of complaint.

She says the landlord refused to conduct any repairs to the loose plugs but agreed to fix the dryer plug. Apparently water leaking from one of the two sinks in the upper bathroom was leaking down to the dryer plug outlet, causing it and the furnace pilot light to fail. The furnace began to fail in mid January.

A workman came on December 30 to look at the dryer. A "new" dryer was installed January 7.

The tenant testifies that when Mr. R. M. started repairs in late December or early January she and her three children started getting sick. She says that whatever it was that Mr. R.M. sprayed on the area of septic leakage came upstairs.

She thinks that the repair work exposed harmful substances in the walls and ceiling of the home and that is what caused the illnesses.

As a result, the tenant had her eldest child, a ten year old, stay with his father after January 29 until about February 24.

On February 2, the tenant's two younger children went to stay with their father (a different man than the father of the ten year old).

In mid-February the landlord sent Mr. E.J. to "fix all the tenant's complaints." The tenant says that she was uncomfortable with Mr. E.J. being in the home because his grandson, her ex-partner had been thrown out of the home for physically abusing her. Her ex-partner has signed a peace bond to have no direct or indirect contact with her and she felt having his grandfather there might be indirect contact. Though she did not make this concern known to the landlord, she says she felt she had to be present whenever Mr. E.J. was in the home.

On March 1 the tenant visited her doctor. He told her that if it is mould in the house and if it is affecting her then she and her children need to be out of the home.

Since March 2, the tenant and her three children have been living with her mother in another town. She has been back and forth to the home recently, in order to prepare to move.

The tenant testifies that removing herself and her children from the home has caused significant stress and anxiety and has resulted in a considerable increase in her travel costs.

The tenant complained to her MLA, whose office wrote to the landlord. The landlord replied with a letter in its defence and in that letter stated that the septic leakage was repaired around December 10. It is apparent though that it was not completed until December 22.

The tenant adduces a video surreptitiously taken by her while at the landlord's office. In the video the tenant engages in conversation with the office receptionist. The receptionist states that the house "is probability to old to fix." The tenant considers that to be the true reason the landlord has not attended to her complaints as quickly as she thinks it should have.

The landlord's representative Mr. G. refers to the move-in condition report signed by the parties. In it the lower bathroom is described "poor, falling apart." He notes that the portion of the report entitled "Repairs to be completed at start of tenancy" is blank and says that means the tenant agreed that the lower bathroom would not be repaired.

Mr. G. testifies that the first complaint from the tenant was November 9, 2015 regarding a bathroom sink. He produces a record showing that the landlord issued a work order for the repair the same day and repair was completed by November 12.

He says the next complaint was November 24 when the tenant reported a sewage smell. He shows that the landlord issued a work order for a plumber to attend and repair on the same day and that on the next day, November 25, a repairman was on site to conduct the repair.

His correspondence shows that the plumber refused to conduct repairs until the cat feces littering the top of the septic tank had been cleaned away. He says the tenant was informed of this requirement on November 27, but by December 2 the landlord had not heard back from her. The tenant was contacted and reported that she had been ill by would attend to the cleaning.

On December 8 the landlord issued a new work order to the plumber. Mr. G. agrees the work was completed on December 22. A “sewage ejection pump” had failed and the sink was rusted.

Mr. G. acknowledged that the leak caused some flooding and that the drywall and linoleum had to be removed from the lower bathroom. The plumber had not mentioned this to him but the work was attended to when the tenant raised the issue. He says that the room has been re-dry walled but does not need painting or flooring because it was to be a storage room, not a functioning bathroom.

Mr. G. says that on January 20 the tenant complained of no heat. He says a work order was issued and work completed on January 27. The pilot lit had gone out.

He says that the landlord’s worker, Mr. E.J. had difficulty arranging convenient work visit times with the tenant. Mr. E.J. reported to him that he had called the tenant on February 19 but she was going out. He called February 20 and 26 and left a message with the tenant but there was no call back on either call. He reached the tenant by phone on March 9 and she told him she would call him back. Again on March 11 the tenant called saying she would call him back. On March 17 he called to set up a visit for March 18 but heard nothing back from her.

Mr. G. says that Mr. E.J. was to repair any “live wire” issues he discovered.

He says he was unaware of any peace bond against the tenant’s ex-partner and would have sent someone else to attend to the repairs had the tenant complained.

### Analysis

I have considered all of the evidence presented during the hearing though it may not all be referred to in this decision.

I give no consideration to the allegations in the affidavit of Mr. D.L.. They were amply rebutted by the responding testimony of the tenant and her witness Ms. S.N.

I give no consideration to the opinion of the landlord’s receptionist as captured on the tenant’s secret recording. There is no basis for me to conclude that it was an informed opinion or that she was doing anything more than placating or sympathizing with the tenant.

A landlord has an ongoing obligation to repair and maintain premises.

Section 32(1) of the *Residential Tenancy Act* (the “RTA”) provides:

(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.

The age of this rental unit was not stated, but is obviously not new or of recent construction. The character of the rental unit may be discerned from comments contained in the move-in inspection. It discloses:

- The entry way walls and trim were discolored. Its closet door was off its hinges. The entry carpeting was “fair.”
- In the kitchen the flooring was “ripped at seams.” The ceiling was “not done yet.” The exhaust hood and fan were yellow. Racks were missing in the refrigerator.
- The living room walls and trim had old stains. The lighting fixtures/ceiling fan/bulbs were “not finished.” There were no window covers on the sliders.
- In the main bathroom the ceiling, cabinet and mirrors were “old.” The “tenant shower leaks.”
- The master bedroom was noted as dusty and there were no closet doors. There were no covers on the lighting fixtures.
- In the second bedroom there were not closet doors nor covers on the lighting fixtures or windows.
- On the exterior it was noted that the deck “has rot.”
- In the utility room it was noted that the washer was leaking and there was no closet door.

As stated at the beginning of this decision, the question of ordering the landlord to repair any items is no longer pertinent. The tenant will have moved out by the time the parties receive this decision.

What is left is a determination of whether the landlord breached its duty to repair and maintain the premises and, if so, then whether or not the tenant suffered damage or loss as a result.

In considering a landlord's obligations and a tenant's inconvenience, it may be said that sometimes things break or fail in a household. Generally speaking, a landlord is obliged to investigate and conduct necessary repairs in a timely manner. A tenant is expected to suffer the inconvenience while the landlord does so; as she would if it were her own property. If a landlord fails to investigate and conduct necessary repairs in a timely manner it may well be liable for the tenant's cost and inconvenience in dealing with breakage or failure.

The items to be dealt with will be addressed in accordance with the list the tenant attached to her application.

#### Kitchen and Bathroom Sinks

In regard to the kitchen sink, the evidence shows that it was a repair done immediately after the tenant called the repairman on January 31. She says it was a temporary fix. The landlord says it wasn't.

I find that the landlord completed an immediate repair to the sink and that the tenant has suffered no particular loss following the fix. I dismiss this item of the claim.

In regard to the bathroom sink, the issue appears to have arisen in late January as a result of the dryer plug failure. The "fix" appears to have been to disconnect the plumbing below one of the two side-by-side sinks in the bathroom. The tenant covered it over with plastic. The sink was not useable for the remainder of the tenancy.

It may be that the pipes below the sink were rusted and the plumber could not conduct an adequate repair without replacing pipes in the wall. In any event, I find that it was not an adequate repair, or any repair, of the bathroom sink. It was the removal of a facility that came with the tenancy.

In such circumstances the tenant is entitled to recover for the loss of that facility.



The tenant presented no evidence upon which it could be determined that she suffered any loss or inconvenience by having only one sink in the bathroom. I am satisfied though that she would have suffered some loss or inconvenience, even if just loss of amenity in the bathroom. In result, the tenant has failed to prove her damages. In such circumstances I award only nominal damages in the amount of \$50.00.

Under this same heading the tenant has cited the dishwasher pipes leaking. It does not appear that the landlord has ever received a formal notice or complaint about this item. There is no evidence about the extent of the leak. Was it an occasional drip or a gusher? In these circumstances I am conclude that the landlord has not had fair opportunity to investigate and repair or that the tenant has suffered any damage or loss.

I dismiss this item of the claim.

#### Exposed Live Wires & Broken or Unusable Plug-Ins

These items were fairly raised in the tenant's December 23 letter to the landlord.

The exposed/live wires are in an outlet box shown in the tenant's photos. It appears to be box located high on the wall of the downstairs bathroom.

It has not been shown on a balance of probabilities that the wires, curled up and topped with plastic caps in the box, are live.

One does not have to be a certified electrician to know that all electrical boxes should have covers, and it might have been an item that the landlord could have been ordered to repair, but the tenant has not shown any damage or loss resulting and so this item of the application must be dismissed.

In regard to the plug-ins, the tenant indicated that many plug-ins were loose. Plugs would not fit tightly into them. She referred to "faulty plug-ins" in her December 23 letter.

The landlord decided, after investigation, not to repair or replace the alleged unusable plug-ins.

The tenant and her family had been living in the rental unit for over three years before she wrote to the landlord about the plug-ins. That indicates to me that the issue was not a significant problem for a very long time.

The tenant's claim alleges that "90% of the plug-ins are unusable as plugs fall out of them due to incorrect installation." There was no evidence given during the hearing to justify a finding that any plug-ins had been incorrectly installed.

I dismiss this item of the claim.

#### Washer Leaking When Used

This complaint does not appear to have been formally communicated to the landlord until the application documents were served on it. There is insufficient evidence to determine the extent of any leak or that the tenant suffered any inconvenience or loss by having to forego use of the machine, use a commercial laundry facility or a machine at another location.

I must dismiss this item of the claim.

#### Cracks Caused by Earthquake

The tenant's application alleges multiple large cracks in the stucco in the master bedroom, cracks around the outside of the front door and in the ceiling throughout the kitchen.

It appears that first mention of this cracking was in the tenant's application documents.

There was an allegation that the cracks were causing vermiculite and perhaps asbestos to fall into the home, posing a health risk. This has not been proved. The fact that the tenant's friend Mr. M.H. may have worked the industry and is of the opinion that homes of this age might contain such material, is not sufficient proof that this home does contain such material, or that such material is leaking into the home or that any such leakage poses a health risk.

I find that the tenant has not suffered any loss or inconvenience from the cracks from the time she raised them with the landlord to the end of the tenancy and so I dismiss this item of the claim.

### Unable to Safely Use Dryer

The tenant reported dryer trouble in her December 23 letter. At that time it was only known that the dryer would shut off. The problem was diagnosed as the dryer being “toast” according to the landlord’s workman and a new dryer was provided. In my view this all happened in reasonable period of time. The landlord acted reasonably quickly and the tenant would normally be required to accept the minor inconvenience of it.

I dismiss this item of the claim.

### Downstairs Bathroom is Unfinished

There are two aspects to this item of the claim: the rough finish in the bathroom and the issue of the septic pump failure.

In regard to the first aspect, after the septic tank pump was repaired the landlord, on being informed by the tenant, removed the linoleum and drywall that had been saturated with septic overrun. The landlord has replaced, taped and mudded the drywall but has not painted it or replaced the flooring.

I find that the landlord was not responsible to do so. The parties agreed that this bathroom was to be a storage room. The tenant cannot demand that it be put in better condition than a regular storage room.

I dismiss this item of the claim.

In regard to the septic tank I find that its pump failed on or before November 23 and that the tenant reported it to the landlord on that date.

The smell of septic waste in a rental unit is in the nature of an emergency situation. The landlord acted promptly by having a plumber attend on November 25.

It is apparent that the leak was not a major leak as the system still functioned to an extent. The plumber told the tenant not to use her washing machine until repairs were done and to limit the use of water if she smelled the septic smell.

There was a delay to the repairs caused by the fact of cat feces in the work area. I consider it fair that the plumber and landlord required of the tenant that she clean up the feces before the plumber did his job.

There is a discrepancy in the evidence about whether the landlord was informed by the tenant on December 2 that the cleaning had been done or whether it was December 8.

The septic tank was finally repaired by December 22.

It took about 28 days to complete repairs. Between seven or eleven of those days were taken up while the tenant cleaned. Given the emergency nature of the problem, even the remaining seventeen days was an unreasonable length of time to attend to the repair.

I find that the tenant suffered a significant impairment of her use of the premises during that period of time. She would have been without her washing machine and restricting her use and water. She would have been on the alert for the smell of septic waste.

The tenant alleges that as a result of the septic leak, she and some of her children became ill. As a result, and as a result of her general worry about her children, she kept her oldest son at his father's home through February and her two younger children at their father's home through February. She moved them and herself to her mother's home for most all of March.

The tenant can hardly be faulted for taking the steps she considered necessary in the circumstances. However, in a dispute resolution proceeding, where it is claimed that the landlord should be responsible for the loss and inconvenience associated with that decision, she must show that there was, in fact, a threat to the health of herself and her children by staying in the home.

In this case there is insufficient evidence to show that the rental unit posed any health risk to the tenant or her children.

There is no medical evidence or evidence from a health official showing that any of them have been examined or that the home has been inspected and that it has been determined that the septic waste caused them illness or posed the risk of illness.

The tenant adduced a doctor's letter advising her to leave the home. As shown at hearing, the doctor did not view the premises and based the advice on what he was told by the tenant. What he was told was not disclosed.

The tenant intimates that the spray used by the bathroom remediation workman was seeping upstairs and that it posed a health risk. There is no evidence to support such a connection.

The tenant alleges the existence of “black mold” in the home. At the same time she stated that she had contacted health officials about the state of the premises but they did not come because they told her they would only come to look if she could see black mold. She said that finally at the end of January, when the septic tank had been repaired and the lower bathroom area remediated, a government health official did come but failed to provide the tenant with any report.

In summary, the tenant has failed to prove that the house or the repairs posed a health risk.

While the tenant’s action removing the family from the home may well have been prudent in her mind, in this case the landlord is not responsible for the inconvenience or expense she incurred as a result.

The tenant is entitled to damages for the impairment of the use of the premises resulting from the septic tank failure. In all the circumstances, having regard to the delay likely attributable to her, I award the tenant \$400.00.

#### Other

In her Monetary Order Worksheet the tenant claims for costs related to bringing this application, including postage and printing costs. These items are in the nature of “costs and disbursements.” An arbitrator’s power to award costs and disbursements appear to be limited to awarding recovery of an applicant’s filing fee.

The tenant also lists time away from her children as a possible ground for an award. That as well, is a loss inherent in the dispute resolution process and for which an award cannot be made even where an applicant is wholly successful.

#### Conclusion

The tenant is entitled to a monetary award totalling \$450.00. She did not pay a filing fee.

There will be a monetary order against the landlord in the amount of \$450.00.

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: March 29, 2016

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Residential Tenancy Branch