



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMES FOR GOOD SOCIETY  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes      MNDC, OLC, ERP, PSF, RPP, RR, O, FF

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make emergency repairs for health or safety reasons, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order requiring the landlord to return the tenants' personal property, pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and his advocate, PG (collectively "landlord") and the tenants' agent, CR ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants' agent confirmed that she is the chair of the Board of the "tenant company" named in this application and that the "individual tenant" SA was her client and that she had authority to speak on behalf of both tenants at this hearing. This hearing lasted approximately 50 minutes in order to allow both parties to fully present their submissions.

### Preliminary Issue - Service of Documents

This matter was previously heard by a different Arbitrator on May 16, 2016 and a decision was issued on the same date (“previous hearing” and “previous decision”). Only the tenant attended the previous hearing. The landlord applied for a review of the previous decision because he was unable to attend the hearing due to circumstances beyond his control. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated May 30, 2016. By way of the review consideration decision, the landlord was required to serve the tenants with a copy of the review consideration decision, the notice of review hearing and the written evidence that he submitted with his review application. The landlord confirmed that he submitted all documents, except for his written evidence, to the tenants. The tenant confirmed receipt of all documents, except for the landlord’s written evidence. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the review consideration decision and notice of review hearing. I advised both parties that I could not consider the landlord’s written evidence at this hearing or in my decision because the landlord did not serve it upon the tenants as required by the *Act*.

The landlord confirmed receipt of the tenants’ application for dispute resolution package (“Application”). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants’ Application.

The landlord confirmed that he did not receive a cheque in the amount of \$394.81, which the tenant said was submitted as proof of the individual tenant’s income with the tenants’ Application. The tenant was unable to provide a date and method by which this cheque was served on the landlord. Accordingly, I advised both parties that I could not consider the tenants’ cheque at this hearing or in my decision because the tenant could not prove service.

#### Preliminary Issue – Tenants’ Application

At the outset of this hearing, the tenant confirmed that she did not wish to pursue any claims of the tenants’ Application, except for the monetary order, a past rent reduction and the filing fee. Both parties confirmed that the tenant had already vacated the rental unit. Accordingly, all other portions of the tenants’ Application are dismissed without leave to reapply.

#### Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the filing fee for this Application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The tenant said that this tenancy began in March 2015. The landlord said that he took possession of this rental unit in August 2015 and assumed this tenancy that was already in place. Both parties agreed that this tenancy ended on April 1, 2016. Both parties agreed that monthly rent in the amount of \$750.00 was payable on the first day of each month and a security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties agreed that a written tenancy agreement was signed by both parties. The rental unit is a basement of a house.

At the hearing, the tenant amended the tenants' Application to seek a monetary order of \$1,125.00 total rather than the \$2,000.00 originally sought in the tenant's Application and at the previous hearing. The tenant confirmed that the tenants were seeking a return of their security deposit of \$375.00, which the tenant agreed that no application was filed at this hearing or the previous hearing.

The tenant also confirmed that the tenants were seeking a monetary order and past rent reduction of \$750.00 for March 2016. The tenant said that the individual tenant paid full rent of \$750.00 for March 2016 and was unable to live in the rental unit, which he vacated on April 1, 2016. The tenant stated that the individual tenant returned home around March 16, 2016, but this may not be the exact date, after being away for two days and he could not live at the rental unit because it was under construction and there were no walls, drywall, or door at the unit. The tenant claimed that the individual tenant was not aware of any renovations being done by the landlord and that the rental unit was unsuitable for occupation. The tenant maintained that the individual tenant was homeless because of the landlord. The tenant explained that the individual tenant incurred expenses for food and a couch damaged by the landlord.

The landlord said that the tenants fabricated this entire claim and that the tenant company is trying to obtain money improperly on behalf of the individual tenant. The landlord stated that he did not renovate the tenant's rental unit. He claimed that he was only renovating a room beside the tenant's rental unit in order to make an extension of the house. The landlord testified that he paid for the tenant to stay in a hotel from April 1 to 15, 2016 because the tenant was bothered by the noise of the renovations occurring next door to his rental unit. The tenant said that the landlord only paid for four nights at the hotel.

The tenant provided coloured photographs and claimed that a twin bed in one of the rooms proves that the photographs are of the rental unit during the landlord's renovations. The landlord claimed that the tenants took photographs of the extension to the house where the renovations were being completed, not the rental unit.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenants provided insufficient evidence that the individual tenant overpaid for March 2016 rent or the landlord caused a loss resulting in the homelessness of the individual tenant. The tenant did not have any paperwork in front of her during the hearing, saying that she only had a few days to prepare for the hearing. I provided the tenant with ample opportunity during the hearing to present submissions and find her paperwork. I cautioned the tenant that the onus of the burden of proof was upon her to present the tenants' claim as this was a new hearing. The tenant said that she had already presented her evidence and submissions at the last hearing and there was no need to do so again at this hearing.

I find that the tenant was unable to provide the exact dates when the individual tenant suffered losses as a result of the landlord. When questioned as to why the tenants

were seeking rent back for the entire month of March 2016 when the tenant claimed that the landlord performed renovations around March 16, 2016, the tenant was unable to provide an answer. The landlord disputed the tenants' entire claim, stating that he only renovated a room next door to the rental unit, not the rental unit itself. I find that the tenants' coloured photographs do not prove that they are of the rental unit. Accordingly, the tenants' Application for a monetary order and past rent reduction of \$750.00 for March 2016 rent is dismissed without leave to reapply.

The tenants did not apply for a return of the security deposit of \$375.00 and therefore, I cannot decide this issue at this hearing. The tenants must file an application for dispute resolution in order to obtain a return of the security deposit.

As the tenants were unsuccessful at this hearing, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants' entire Application is dismissed without leave to reapply.

This review hearing decision replaces the previous decision, dated May 16, 2016.

The previous monetary order of \$2,100.00, dated May 16, 2016, issued to the tenant against the landlord, is cancelled and of no force or effect.

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: July 04, 2016

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Residential Tenancy Branch