



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, RP, RR, MNDC, FF

### Introduction

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

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order for the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant MZ and the landlord's agent (the "landlord") attended the hearing. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Preliminary Issue –Settlement

During the hearing the landlord agreed to conduct the requested repairs. Consequently, the tenant is no longer seeking an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement or an order for the landlord to make repairs to the

rental unit. Therefore these portions of the tenant's claim are dismissed without leave to reapply.

Section 63 of the *Act* provides that if the parties settle their dispute during a hearing the Director may record the settlement in the form of a Decision or an Order. Pursuant to the above provision, discussion between the parties during the hearing led to a settlement / resolution. Specifically, the parties agreed and confirmed as follows;

1. the tenant and landlord agree that the landlord will plaster, sand and paint the rental unit bathroom in an approved landlord colour on Friday, September 23, 2016 between the hours of 9:00 a.m. and 5:00 p.m.
2. the tenant and landlord agree that the landlord will paint the bathroom baseboards, hallway closet baseboards, bedroom baseboards and bedroom closet baseboards to match the existing baseboards on Friday, September 23, 2016 between the hours of 9:00 a.m. and 5:00 p.m. The tenant and landlord agree that in the event the landlord is unable to match the existing baseboard colour the landlord will repaint all baseboards within the rental unit.

#### Issue(s) to be Decided

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

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

Are the tenants authorized to recover the filing fee for this application from the landlord?

#### Background and Evidence

As per the testimony of the parties, the tenancy began on August 1, 2013 on a fixed term. Rent in the amount of \$1,293.51 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$600.00 and a pet deposit in the amount of \$600.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

#### Tenants

The tenants seek 20% of the total rent paid between July 2014 and the date they filed their dispute resolution application in July 2016. In total, the tenants seek \$6,200.30 in compensation.

It is the tenants' position that they have been inconvenienced by the unfinished repair work within their rental unit.

In particular, in May of 2014 the tenants experienced an issue with the mixer valve of their shower and reported this to the onsite manager. The tenant estimated that sometime between July 21 and July 25, 2014, the mixer valve was repaired. However, tenant MZ testified that as a result of that repair the bathroom wall endured some damage that has not been repaired to date. Additionally, tenant MZ testified that the repair work to the mixer valve resulted in an unglazed portion of shower tiles. Tenant MZ testified that despite contacting the landlord on numerous occasions to tend to this repair the tiles were not re-glazed until September 2015.

On February 15, 2016 the tenants were notified of a water leak in an adjacent rental unit. Because the tenants reported water seepage into their bathroom that day, a plumber was dispatched to repair the water leak in the adjacent rental unit. The tenants understood their bathroom would be assessed and repaired the following day.

Tenant MZ testified that on February 16, 2016 the workers removed the bedroom closet baseboards and placed fans in the damp areas of the rental unit. Tenant MZ contends that this work was not sufficient; the workers should have removed all wet baseboards and portions of damp wall. The tenants written statement within their documentary evidence indicates a worker came the following week and removed the remaining wet baseboards. Tenant MZ testified that despite multiple dates scheduled for the landlord to complete the repair work the baseboards were only recently installed on September 8, 2016.

Tenant MZ indicates that there have been a total of nine days taken off work without pay and well over 15 occasions where a dog sitter had been arranged for work orders that did not materialize. The tenants submitted written statements from their respective employers attesting to absences due to their living accommodation.

#### Landlord

The landlord testified that according to her records a maintenance request in regards to the faulty mixer valve dated July 4, 2014 was submitted by the tenants and a notice of entry dated August 6, 2014 was issued to the tenants. An invoice dated August 12,

2014 shows the valve was replaced this date. The landlord has submitted copies of the maintenance request, notice of entry and invoice. The landlord acknowledged that the damage to the bathroom wall was not repaired despite many work orders. The landlord explained that although it was only the tenant's opinion that the shower tiles required re-glazing; they were re-glazed in November of 2015.

The landlord agreed a worker attended the unit on February 16, 2016 at which time the bedroom closet baseboards were removed and dehumidifiers were placed in the damp areas. The landlord testified that the unit was assessed for moisture on February 19, 2016 and a follow up on February 23, 2016 was attempted but did not materialize, as workers were unable to access the unit. The landlord denies the remaining baseboards were removed by authorized workers, she alleged the tenant removed the baseboards himself. The landlord contends the tenant removed the dehumidifiers on February 24, 2016. It is the landlord's position that the water leak issue was rectified and the tenant created the outstanding issue of the baseboards. Despite this, the landlord replaced the baseboards September 8, 2016.

The landlord acknowledges some service delays for the replacement of baseboards from February to August 2016 but does not believe a 20% reimbursement accurately reflects the loss.

### Analysis

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of interference and failed to take reasonable steps to rectify it would constitute a breach.

A breach of quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. 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 applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss

with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

#### *Mixer Valve*

The tenants have provided insufficient evidence to establish the issue with the mixer valve was reported to the landlord in May of 2014. Based on the written maintenance request, I find the landlord was made aware of the issue on July 4, 2014. I further find the mixer valve was repaired August 12, 2014 as per the invoice submitted by the landlord. On this basis, I find that the landlord completed repairs within a timely manner. As such, this conduct does not amount to unreasonable disturbance or significant interference infringing on the tenant's right to quiet enjoyment.

I am satisfied by the photographs submitted by the tenant that the bathroom wall underwent some minor damage as a result of the mixer valve repair and that the landlord was made aware of this damage by repeated requests for repair. I find the landlord neglected to tend to this matter and this therefore constitutes a breach. For this reason I grant the tenants a nominal award in the amount of \$100.00.

I find it probable that as a result of fixing the mixer valve, a portion of the tiles remained unglazed and that the landlord was notified of this concern by requests for repair. Again, I find the landlord's failure to take reasonable steps in a timely fashion is a breach of quiet enjoyment, and therefore grant the tenants a nominal award in the amount of \$50.00.

#### *Water Leak*

The landlord testified that the water leak issue in February of 2016 was rectified in a timely manner but does acknowledge the tenants were inconvenienced by service delays in minor cosmetic repairs consisting of baseboard replacement in the bathroom, closet and hallway. I concur that the water leak was contained in a timely manner and the replacement of baseboards is cosmetic and relatively minor. Based on tenant MZ's testimony, submitted evidence and the landlords admission, I find the delay in service constitutes a breach and therefore grant the tenants a nominal award in the amount of \$250.00

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application.

#### Conclusion

I order the tenants to deduct \$500.00 from future rent payable to the landlord at the rental unit, in full satisfaction of the monetary award provided to the tenant at this hearing.

The tenants' application for an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement and an order for the landlord to make repairs to the rental unit are dismissed without leave to reapply.

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 17, 2016

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Residential Tenancy Branch