



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNDC; RR; O

### **Introduction**

This is the Tenant's Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; a rent reduction; and "other" orders.

This Hearing was scheduled to commence at 11:00 a.m., October 19, 2016, by teleconference. The Tenant and her advocate signed into the Hearing, but the Landlords did not. The telephone line remained open and monitored for 1 hour.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she sent a copy of her Notice of hearing documents to each of the Landlords by registered mail on September 1, 2016. The Tenant provided the tracking numbers for both of the registered mail packages. The Tenant testified that both of the packages were returned to her, unclaimed. FK's package was returned to the Tenant on September 30, 2016. AC's package was returned on October 7, 2016. The Tenant stated that she telephoned both of the Landlords to advise them she had documents for them and that CA refused to pick up his documents and FK told the Tenant she could personally serve him in Vancouver.

Section 89 of the Act allows for service by registered mail. Registered mail is deemed served five days after mailing, whether or not the addressee accepts, or refuses, or neglects to pick up the mail. Therefore, I find that the Landlords were duly served and the Hearing continued in their absence.

The Tenant provided an additional evidence package to the branch on October 17, 2016, which is outside of the time lines provided in the Act and the Rules of Procedure. The Tenant did not serve the Landlords with the additional evidence package. For these reasons, this late evidence was not considered.

The Tenant applied to withdraw her claim with respect to bed bugs. I find no prejudice to the Landlords and therefore granted her request. The Tenant is at liberty to re-apply for that portion of her claim if she so desires.

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

Is the Tenant entitled to compensation and a rent reduction?

### **Background and Evidence**

This tenancy began on March 1, 2012. Current monthly rent is \$609.00, due on the first day of each month. The Tenant paid a security deposit at the beginning of the tenancy in the amount of \$297.50.

The Tenant testified that her balcony has been in need of repair since she moved into the rental unit. She testified that there is a hole in the right-hand corner of the balcony deck and that it is now unsafe to stand on the balcony because it is "super soft". The Tenant stated that her grandchildren cannot play on the balcony. She stated that she cannot enjoy the balcony and has to smoke outside. The Tenant testified that she would use the balcony year-round if it was safe, except when it is raining.

The Tenant estimated that the balcony is approximately 8 feet by 5 feet, and that her apartment is approximately 600 square feet.

The Tenant provided a copy of an e-mail dated July 21, 2016, from the previous caretaker which states that in December, 2012, patio decks in the rental property were being replaced due to rot. It further states that as of July 21, 2016, the Tenant's deck has still not been replaced. The e-mail is signed by the previous caretaker.

The Tenant testified that there are other items in the rental unit that require maintenance, including:

1. There is mould in the bathroom, which has been there since the Tenant moved in. The showerhead was broken when the Tenant moved in and the Tenant replaced it with her own money because the current caretaker did not fix it. The showerhead cost her \$21.00.
2. The bathroom fan does not work and was supposed to be fixed when she first moved in, but has not been repaired. AC got the parts to fix the fan, but they are still in the box in her bathroom. The Tenant has to take cool showers with her bathroom door open so the mould doesn't get worse.
3. There are no doors on her bedroom closet. They were supposed to be installed when she first moved in, but she is still waiting.
4. On December 5, 2015, the ceiling started leaking. She reported the leak to "Jenny", who is an agent of the Landlord's, on December 8, 2015. On December 9, 2015, AC told the Tenant that he had notified the roofers. When the roof was not repaired by December 17, 2015, the Tenant gave her second notice in writing

and asked for the leak to be repaired by Christmas Day. The leak was repaired in the New Year.

5. The Tenant got new carpet, but her front door keeps catching on the carpet because it wasn't planed.
6. The Tenant does not have proper "running boards" and insects, including black ants, keep coming into her apartment. She uses newspapers to keep them out.
7. The Tenant's son temporarily fixed some drawers in the rental unit, but they are irreparable now. The Tenant asks that the drawers be replaced.
8. The Tenant would like the baseboard in the "front room" painted because it is rusty. She has asked AC "several times" if she could paint it herself, but he said he would come and paint it. He hasn't.
9. The doors to the front of the building are not secure and "addicts keep coming in". The Tenant would like proper working locks put on the doors.

The Tenant provided a copy of a letter dated April 26, 2016, outlining her concerns. The Tenant asked that the balcony be repaired within 14 days. The Tenant testified that she gave the letter to AC on April 26, 2016, and that nothing has been repaired.

The Tenant stated that she thought a rent abatement of \$200.00 per month from the beginning of her tenancy is a fair request, for a total claim of \$10,600.00.

### **Analysis**

Based on the Tenant's undisputed testimony, I find that the Landlord has failed to comply with Section 32 of the Act. Section 32 of the Act requires a landlord to 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.

Section 67 of the Act provides:

### **Director's orders: compensation for damage or loss**

- 67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[reproduced as written]

The Tenant provided documentary evidence that on April 26, 2016, she provided the Landlord with written notice that she required repairs to the rental unit. I accept the Tenant's undisputed testimony that the requested repairs have not been done. I find

that the failure of the Landlord to comply with Section 32 of the Act resulted in a devaluation of the tenancy and that the Tenant is entitled to compensation, pursuant to Section 67 of the Act.

The Tenant testified that the balcony is approximately 1/20<sup>th</sup> the size of the interior of the rental unit. Therefore, I award the Tenant compensation from May 1, 2016 to and including November 30, 2016, in the amount of \$120.00 per month (\$120.00 x 7 months = \$840.00). I also award the Tenant an additional \$50.00 per month for 7 months for the remaining repairs that remain uncompleted (\$50.00 x 7 months = \$350.00). I find that \$21.00 is a reasonable amount to pay for a new shower head and award the Tenant \$21.00 for her out-of-pocket expenses. Therefore, the total monetary award for the Tenant is **\$1,221.00**.

Pursuant to the provisions of Section 65(1)(f) of the Act, I award the Tenant a rent reduction, **effective December 1, 2016**, in the amount of **\$170.00 per month** until such time as the following repair orders are completed:

1. Immediately repair or replace the locks giving access to the rental property.
2. Repair or replace the bathroom fan.
3. Remove any mould from the rental unit.
4. Provide and install doors for the Tenant's bedroom closet.
5. Plane the bottom of the Tenant's front door so that it doesn't rub against the carpet.
6. Inspect the kitchen and bathroom drawers in the rental unit and repair or replace drawers as required.
7. Once the repairs are fully completed the Landlord must provide the Tenant with written notice of completion.

**The Tenant is entitled to this rent reduction for any portion of a month that the Landlord has failed to comply with this Order.**

If there is any dispute as to whether the Landlord has complied with my Order, the Landlord must submit an application for dispute resolution requesting an end to the rent reduction, supported by evidence of repairs done.

The Tenant is advised if making any rent reductions as a result of this repair Order, that she maintain a written record of those monthly deductions.

The Tenant is advised that if the Landlord fully complies with my Order any rent reduction must cease. Rent reductions made after the Landlord has complied with the Order could be considered as unpaid rent. In the event that there is a dispute related to rent owed, the Landlord must bring forward evidence proving compliance with my Order.

### **Conclusion**

The Tenant is entitled to compensation in the sum of **\$1,221.00** for a reduction in the value of the tenancy from May 1, 2016, to November 30, 2016. The Tenant may choose to **either** deduct this award from future rent due to the Landlord **or** enforce the enclosed Monetary Order in Provincial Court (Small Claims) with respect to any balance still owed to the Tenant.

The Tenant is entitled to a rent reduction in the amount of **\$170.00** per month as set out above.

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 08, 2016

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Residential Tenancy Branch