



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, MNDC, FF, O

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order that the landlord make repairs to the unit, site or property pursuant to section 33;
- an order for reduction of rent for repairs ordered but not provided pursuant to section 65; and
- recovery of the filing fees for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she served the application for dispute resolution dated November 21, 2016 (the "application") on the landlord by registered mail on December 6, 2016. The tenant provided a Canada Post tracking number as evidence of service. In accordance with section 89(1) and 90 of the *Act*, I find that the landlord was deemed served with the application on December 11, 2016, five days after its mailing.

There was a previous hearing of this matter on May 30, 2016 under the file number identified on the first page of this decision where another arbitrator issued an order for the landlord to do the following by June 30, 2016:

- a. Hire a licenced electrician to repair or replace the plug in and light.
- b. Repair the laundry room floor.
- c. Paint the interior and exterior of the house.
- d. Replace the carpet in the two bedrooms.
- e. Repair the decks.

The other arbitrator ordered that if the landlord fails to make the repairs, the Tenant has liberty to file a new Application for Dispute Resolution seeking a monetary order for the reduced value of the tenancy.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for the reduced value of the tenancy arising from the landlord's failure to make repairs?

Is the tenant entitled to an order that the landlord makes repairs or provides services?

Is the tenant entitled to recover the filing fees for this application from the landlord?

Background and Evidence

The tenant provided undisputed testimony regarding the following facts. The tenancy began on September 11, 2005. The current monthly rent is \$1,000.00 payable on the first of the month. The tenant continues to occupy the rental unit.

Since the order of May 20, 2016, the tenant has provided undisputed sworn testimony that the landlord has not performed any repairs to the rental unit. The tenant testified that at no time has the landlord or any contractor hired by the landlord inspected the rental unit to begin performing repairs. The tenant stated that the deficiencies in the rental unit have remained the same or have worsened since the order was issued. The tenant testified that she is unable to make full use of the rental unit and has altered her daily routines to accommodate the deficiencies. The tenant testified as she cannot walk on her deck. She said that she must take a circuitous route to access her backyard and garage. The tenant testified that she believes that some of the deficiencies pose a hazard to the safety of any occupants and without timely attention the damages are likely to worsen with time.

The tenant sought to reduce the monthly rent by the following sums for each of the unfinished repairs:

Repair Item	Monthly Rent Reduction Requested
a. Hire a licenced electrician to repair or replace the plug in and light.	\$200.00
b. Repair the laundry room floor.	\$100.00
c. Paint the interior and exterior of the house.	\$50.00
d. Replace the carpet in the two bedrooms.	\$50.00
e. Repair the decks.	\$150.00
f. Tarp the garage from leaks	\$50.00
TOTAL REQUESTED MONTHLY RENT REDUCTION	\$600.00

Analysis – Repair Order

I find that the application for an order that the landlord make repairs was already adjudicated in the earlier hearing with the other arbitrator issuing a conclusive order. Therefore, I find I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the Act and the tenant's application for a repair order is dismissed.

Analysis – Monetary Order

Section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement. I find that failure of the landlord to comply with the repair order has resulted in a loss of value of the tenancy and that the tenant is entitled to a monetary award. I limit my findings to those repairs that were ordered by the other arbitrator on June 30, 2016 which excludes the request to tarp the garage from leaks.

I find that the sum requested by the tenant is in excess of the nature of the repairs required. While the deficiencies in the rental unit may be inconvenient, bothersome, and in some cases a potential hazard, I do not find that they are so material as to reduce the tenant's ability to use the rental unit by half.

The tenant has testified that she continues to reside in the rental unit. The nature of the deficiencies are such that the tenant is constantly aware of the need for repairs and

must alter some of her routines such as using alternate access routes but not so severe that the rental unit is uninhabitable. The deficiencies are unavoidable in the tenant's daily life but are surmountable.

I find that the appropriate loss in the value of the tenancy resulting from the landlord's failure to complete the ordered repairs to be:

Repair Item	Monthly Loss of Value
a. Hire a licenced electrician to repair or replace the plug in and light.	\$50.00
b. Repair the laundry room floor.	\$10.00
c. Paint the interior and exterior of the house.	\$10.00
d. Replace the carpet in the two bedrooms.	\$15.00
e. Repair the decks.	\$25.00
TOTAL	\$110.00

In accordance with section 65(1)(f) of the Act, I issue a retroactive monetary award in the tenant's favour in the amount of \$770.00 {i.e., 7 months (July 1, 2016 to January 31, 2017) @ \$110.00 per month = \$770.00} to compensate the tenant for the loss in value of her tenancy stemming from the landlord's failure to abide by the terms of the previous arbitrator's order.

In the event that the landlord does not complete all of the listed repairs ordered by the previous arbitrator by February 1, 2017, I order that the monthly rent for this tenancy for February 2017, is reduced by \$160.00. On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant's rent will return to the normal monthly amount required by the tenancy agreement and the Act in the month following the completion of these repairs. **By way of example** and so as to ensure that there is clarity regarding the implementation of my decision, **should the landlord not complete repairs until mid- June 2017**, my order would lead to the following monthly rent payments from February 1, 2017 until July 1, 2017 for this tenancy:

Month	Monthly Rent
February 2017	\$840.00 (\$1,000.00 - \$160.00 = \$840.00)
March 2017	\$790.00 (\$1,000.00 - \$210.00 = \$790.00)

April 2017	\$740.00 (\$1,000.00 - \$260.00 = \$740.00)
May 2017	\$690.00 (\$1,000.00 - \$310.00 = \$690.00)
June 2017	\$640.00 (\$1,000.00 - \$360.00 = \$640.00)
July 2017	\$1,000.00

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with the previous arbitrator's decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

As the tenant has been successful in her application, I also find that she is entitled to recovery of her filing fees from the landlord. This results in a total monetary award of \$870.00 for retroactive rent reduction and recovery of the filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$870.00 under the following terms, for retroactive rent reduction and recovery of the filing fee:

Item	Amount
Rent Reduction July, 2016	\$110.00
Rent Reduction Aug, 2016	\$110.00
Rent Reduction Sept, 2016	\$110.00
Rent Reduction Oct, 2016	\$110.00
Rent Reduction Nov, 2016	\$110.00
Rent Reduction Dec, 2016	\$110.00
Rent Reduction Jan, 2017	\$110.00
Filing Fees	\$100.00
Total Monetary Order	\$870.00

To implement the monetary award of \$870.00, I order that the tenant may reduce the amount of her next monthly rental payment to the landlord by that amount. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$870.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

In the event that the landlord does not complete all of the listed repairs ordered by the previous arbitrator by February 1, 2017, I order that the monthly rent for this tenancy for February 2017, is reduced by \$160.00. On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order to modify the reduced rent from an arbitrator appointed under the *Act*. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

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: January 4, 2017

Residential Tenancy Branch