



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, OLC, ERP, RP, LRE, LAT, AS, RR, FF, O

Introduction and Preliminary Matters

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested the following relief:

- A Monetary Order for:
 - the cost of emergency repairs;
 - money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or tenancy agreement;
 - return of all or part of the pet damage deposit or security deposit; and
 - recovery of the filing fee
- An Order that the Landlord:
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*;
 - make emergency repairs for health or safety reasons;
 - make repairs to the unit, site or property;
- an Order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an Order authorizing the Tenant to change the locks to the rental unit;
- an Order allowing the Tenant to sublet because the Landlord's permission has been unreasonably withheld;
- an Order allowing the Tenant to reduce rent for repairs, services of facilities agreed upon but not provided; and
- Other unspecified relief.

Both parties appeared at both dates of the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Interim Decision of December 8, 2016

By Interim Decision dated December 8, 2016, I ordered that the Landlord to make the following repairs by no later than December 19, 2016.

1. Replace the exterior door knob on the rental unit with a locking door and provide the Tenant with keys.
2. Hire the services of a qualified plumber to assess and repair the alleged water leak in the rental unit bedroom which the Tenant claims originates from the upstairs unit. The Landlord shall obtain from the plumber, a written report indicating the source of the leak, the required repairs, including, if necessary, repairs to the drywall, vapour barrier, and flooring.
3. Hire the services of a qualified electrician to repair the light sockets in the bedroom and living room, and the thermostat in the bedroom.

By Interim Decision dated December 8, 2016 I found that the claims to be considered at the continuation of this hearing include:

1. A Monetary Order for:
 - money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or tenancy agreement as it relates to the cost of emergency repairs incurred between May 12, 2016 and October 12, 2016;

- return of all or part of the pet damage deposit or security deposit, should those deposits be in excess of the permitted amounts; and
 - recovery of the filing fee
2. An Order that the Landlord:
- a. comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*; and,
 - b. make repairs to the unit, site or property.
3. an Order allowing the Tenant to reduce rent for emergency repairs not already covered by any Monetary Order for compensation as set out in #1 above.

This Decision is to be read in conjunction with my December 8, 2016 Interim Decision.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or tenancy agreement as it relates to the cost of emergency repairs incurred between May 12, 2016 and October 12, 2016;
2. Is the Tenant entitled to a Monetary Order for return of all or part of the pet damage deposit or security deposit, should those deposits be in excess of the permitted amounts; and
3. Is the Tenant entitled to recovery of the filing fee
4. Is the Tenant entitled to a Monetary Order for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, make repairs to the unit, site or property.
5. an Order allowing the Tenant to reduce rent for emergency repairs not already covered by any Monetary Order for compensation as set out in #1 above.

Background and Evidence

Tenant's Evidence

This tenancy began June 1, 2013. At the start of the tenancy the monthly rent was \$700.00 per month. The Tenant testified that in May of 2013 he provided the Landlord with \$500.00 as a security deposit. In support the Tenant provided a copy of his rental receipts as well as the original tenancy agreement which provided that he was to pay \$500.00 as a security deposit. The Tenant confirmed that no portion of this amount relates to a pet damage deposit as he is not permitted to have pets at the rental unit.

The Tenant stated that the rental unit is on the bottom floor of a three unit property. The Landlord occupies the upper unit although she is often overseas and has a property manager, A.G. attend to the rental. He further stated that A.G. does not attend to required repairs and as such he has personally performed repairs, both emergency and otherwise, renovation services, and general maintenance for the Landlord throughout the tenancy.

As noted in my Interim Decision, the Tenant's request for compensation for his services has been the subject matter of two prior applications; May 11, 2016 and October 7, 2016 (the "Prior Decisions"). The file numbers for those Decisions are included on the unpublished cover page of this my Decision. The effect of the Prior Decisions resulted in my finding as to following parameters of the issues to be considered in the within application:

1. Any claim the Tenant may have for compensation for repairs, emergency or otherwise, up to and including May 11, 2016 were dismissed by the May 11, 2016 Decision and will not be considered.
2. The Tenant's claim for monetary compensation for work completed at the rental unit, save and except for emergency repair costs as provided for in section 33 of the *Residential Tenancy Act*, were found to be outside the jurisdiction of the *Act* pursuant to the October 7, 2016 Decision of Arbitrator Hendrick.
3. Pursuant to the above, the Tenant's claim for monetary compensation for the cost of emergency repairs is limited to the time period May 12, 2016 to October 12, 2016 (the date of the Application before me). For greater clarity, any claim the Tenant may have for monetary compensation for repairs which do not fall under the

definition in section 33, and/or which are outside this time period, will not be considered.

The Tenant claimed the sum of \$14,291.04 on his application for Dispute Resolution filed October 12, 2016. This amount included his request for compensation for his services related to repairs to the rental unit, both emergency and otherwise, renovation services, and general maintenance for the Landlord throughout the tenancy.

When he initially testified he stated that the amount he sought for compensation for emergency repairs, was \$9,273.05. The material submitted by the Tenant in support of his claim was voluminous, and related to claims which were not properly before me as a result of the Prior Decisions. During the hearing on January 17, 2017 I asked the Tenant to present his evidence in accordance with my Interim Decision, and specifically to narrow his submissions based on the parameters noted above, and to confirm the amounts of his claim relating to *emergency repairs*.

The Tenant testified that a pipe burst in the rental unit in July of 2015. As a result, water leaked into his bedroom and damaged the wall and flooring. He stated that the Landlord failed to attend to the required repairs resulting from the leak such that the bedroom wall and floor are damaged and other areas of the rental unit has significant moisture issues. He further testified that water continues to leak in the bedroom, which he suspects is the result of a leak in the upper unit. It was for this reason he sought an Order that the Landlord comply with the *Act* and attend to these repairs. The Tenant stated that when he asked the Landlord why she didn't do the repairs as required, she stated "I couldn't cope and I can't afford it". The Tenant further stated that as the Landlord failed to attend to these repairs, he did them as needed and provided the Landlord with detailed invoices and receipts for every repair that he paid for. Those invoices were submitted in evidence.

Documentary evidence submitted by the Tenant suggests that because the Landlord has not attended to the required repairs, the rental unit has significant mold. The Tenant submitted that the Landlord has failed to follow the repair orders made in the Prior Decisions and as a result he has been forced to attend to remedial work to ensure the rental unit is livable.

The Tenant submitted invoices which detailed the work he completed related to the rental building including general maintenance, landscaping, time associated with renting the other rental unit, as well as time associated with remediating the rental unit as a result of the water leak. The Tenant submitted that of the amounts claimed, the following related to the water leak:

INVOICE	AMOUNT	Amount relating to emergency repairs only
#724487	\$592.80	\$90.00
#724490	\$615.49	\$345.49
#724496	\$375.91	\$115.91
#355327	\$885.00	\$885.00
#355328	\$382.31	\$382.31
#18365	\$1,650.00	\$1,650.00
#18366	\$713.27	\$138.27
#355331	\$3,200.00	\$0.00
TOTAL		\$3,606.98

The Tenant testified that although the Landlord and her agent are required to attend to maintenance and repairs of the rental building, they have failed to do so. He notes that until I made my Interim Order of December 8, 2016, he did not have a functioning/locking door knob. He further submits that the Landlord has yet to fully address the water leak issues despite my Order. Finally, he submits that the Landlord has failed to address electrical issues in the rental unit, including two malfunctioning light junction boxes and a malfunctioning thermostat.

The Tenant confirmed that he did not pay the \$400.00 for the November 2016 rent as ordered by Arbitrator Hendrick. He further confirmed that he did not pay \$500.00 for December 2016, nor did he pay \$500.00 for his rent for January 2017 as he believed the amounts owing to him for emergency repairs relieved him of his obligation to pay rent for those months.

The Tenant testified that as he originally paid rent in the amount of \$700.00, his security deposit should have been \$350.00, not the \$500.00 he paid. Accordingly, he sought recover of the overpayment in the amount of \$150.00.

The Tenant also sought compensation for \$100.00 for recovery of the filing fee.

As such, the amounts claimed by the Tenant are as follows:

Total for emergency repairs	\$3,606.98
Overpayment of security deposit	\$150.00
Filing fee	\$100.00
TOTAL	\$3,856.98

In terms of my Interim Order of December 8, 2016 the Tenant testified as follows.

The Tenant testified at the January 17, 2017 hearing that the Landlord's agent replaced the door knob and the door now locks, but as the holes don't line up, it is somewhat difficult to lock the door.

The Tenant further testified that the Landlord hired a plumber to assess and repair the water leak in the bedroom, and that the plumber attended on December 8, 2016. He stated that the plumber only looked at the leaky pipe, and did not address the possible water leak from the upstairs unit. The Tenant further testified that the plumber did not provide a written report indicating the source of the leak and the necessary remedial work as required.

The Tenant also testified that the Landlord failed to hire an electrician to repair the light sockets in the bedroom and living room and the thermostat in the bedroom. The Tenant stated that on December 8, 2016, the Landlord told the Tenant that he would be contacting him about an electrician and then he never heard from him again until January 13, 2017 when the Landlord's agent came to the rental property. The Tenant stated that the Landlord failed to follow the *Act* with regards to giving a Notice of Entry for the electrician.

Landlord's Evidence

The Landlord's agent, A.G., testified as follows.

In response to the Tenant's request for the cost of emergency repairs, A.G. stated "if the Tenant had paid rent, or prepared the invoices professionally, I would have accepted them." He confirmed that some of the work the Tenant did related to emergency repairs, such as the repairs relating to the bursting pipe. A.G. confirmed it was the Landlord's position that none of the other amounts claimed related to emergency repairs; he did not provide any further clarification or submissions in this regard.

A.G. confirmed that as the tenancy agreement provided that the rent was \$700.00, the Tenant was overcharged \$150.00 for overpayment of the security deposit.

With respect to my Interim Decision A.G. testified as follows. He stated that he changed the doorknob the day after the December hearing.

He further testified that he hired a plumber, who attended the rental unit on December 7, 2016, although he invoiced on December 8, 2016. He confirmed that he obtained a

“report” from the plumber, although that report was not provided to the Branch or the Tenant. He stated that the plumber was “in and out very quickly” and he capped off the mainline and addressed the water leak from the pipe. He confirmed that the plumber did not look upstairs to determine whether the water originated from that source, nor did the plumber address any required repairs.

A.G. further stated that he tried to hire an electrician immediately after the hearing but could not do so by December 19, 2016 because the electrician was from a community three hours away and was too busy. A.G. stated that the last text message he sent to the Tenant was on January 13, 2016 to inform the Tenant he had hired an electrician, but the Tenant did not cooperate or allow them into the rental unit. He stated that the Tenant didn’t want the Landlord to do the repairs so he would have “something to talk about” at the hearing before me.

Tenant’s Reply

In response to the Landlord’s submissions that the Tenant refused entry to the rental unit for the electrician, the Tenant stated that the Landlord was lying. He reiterated that the only communication he had from A.G. was on January 13, 2017: the Friday before the continuation of the hearing.

The Tenant also stated that he allowed the plumber to attend the rental unit even though had not received appropriate notice as he wanted the work to be completed.

Analysis

The Tenant seeks monetary compensation for the cost of emergency repairs.

Emergency repairs are defined in section 33 of the *Residential Tenancy Act* as follows.

33 (1) In this section, “**emergency repairs**” means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

As I informed the Tenant during the hearing, the Tenant bears the burden of proving that the repairs for which he seeks compensation meet the above definition.

I accept the Tenant's evidence that the Landlord failed to attend to the water leak in the bedroom of his rental unit. While it appears some remedial work was done by the Tenant in July of 2015, the water issues continued until the hearing. The Tenant submits that these issues relate to damaged pipes in the upstairs unit. The Landlord's agent confirmed that some of the repairs related to the "burst pipe", and were therefore emergency repairs.

Further, my Interim Decision specifically Ordered that the Landlord hire a plumber to ascertain and report on the source of the leak and to provide recommendations with respect to required repairs. The Landlord failed to comply with my Order in that regard.

Accordingly, and based on the evidence before me, I find that some of the repairs for which the Tenant seeks compensation relate to major leaks in the pipes which meets the definition of emergency repairs in section 33(1)(c)(i) of the *Act*.

The Tenant also submitted photos of the rental unit upon which he has written "black mould". He did not provide any further evidence to support a finding that the mould is in fact black mould. However, I find that the accumulation of mould in the rental unit was likely as a result of the water issues arising from the leaking pipes which the Landlord failed to remedy. Accordingly, I find that repairs relating to repainting of the rental unit to be an emergency repair as defined by the *Act*.

I am also satisfied, based on the testimony of the parties, and the documentary evidence before me that the Tenant has met the test in section 33(3) with respect to the emergency repairs necessitated from the water leak. I accept the Tenant's testimony that he communicated directly with the Landlord about the water issues and damage to the rental unit. While the Landlord was ordered to attend to all repairs and maintenance by the Prior Decisions, I accept the Tenant's evidence that she failed to do so claiming she was not in a financial position to do so. I further find, based on A.G.'s testimony and the Landlord's failure to comply with my Interim Decision, a general unwillingness on the Landlord's part to address the required repairs to the rental unit.

I am further satisfied that the Tenant provided the Landlord with detailed invoices as to the amounts claimed for the emergency repairs relating to the water leak. While those

invoices included items which are not related to emergency repairs, such as landscaping and attending to renting the other unit, some of the line items relate to the water leak issues such as preparation and painting as well as related materials.

The *Act* further provides that a tenant will be entitled to compensation for the amounts paid for emergency repairs if the Tenant can prove he has satisfied sections 33(5) and sections 33(6) which read as follows:

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I have reviewed the invoices submitted by the Tenant and find as follows.

Invoice #724487

The Tenant claimed that \$90.00 of the amount of this invoice related to emergency repairs. This invoice relates to cleaning other units, removing wallpaper, showing the suite, washing windows and gardening. There is no indication on this invoice of work which meets the definition of emergency repairs.

Invoice #724490

The Tenant claimed that \$345.49 of the amount of this invoice related to emergency repairs. I find the following line items to be related to emergency repairs:

Bathroom prep roof & walls	\$100.00
Bathroom finish cutting and roll roof and walls including clean up	\$110.00
TOTAL	\$210.00

Invoice # 724496

The Tenant claimed that \$115.91 of the amount of this invoice related to emergency repairs. I find the following line items to be related to emergency repairs:

2 KILZ seal primer	\$108.61
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Invoice #355327

The Tenant claims the full \$885.00 of this invoice as relating to emergency repairs. This invoice includes painting of the kitchen, cleaning and re-grouting of the bathtub, painting of the living room, replacing light fixtures and outlets. I find the following line items relate to emergency repairs. As some of the line items include non- emergency related work I have assigned a nominal amount:

Paint prep	\$20.00
Finish paint prep	\$50.00
Roll roof and walls in kitchen	\$155.00
TOTAL	\$220.00

Invoice #355328

The Tenant claims the full \$382.31 of this invoice as relating to emergency repairs. I find the following line items relate to emergency repairs. As some of the line items include non- emergency related work I have assigned a nominal amount:

Prep bathroom, cut room	\$50.00
2 rolls painters tape	\$8.94
1 can KILZ primer to finish Living room	\$51.51
Three cans paint semigloss	\$98.17
TOTAL	\$208.62

Invoice #18365

The Tenant claims the full \$1,650.00 of this invoice as relating to emergency repairs. This invoice includes hours of alleged work from August 11 to August 30, 2016. There are no details provided on this invoice as to what work was completed. Accordingly, I find the Tenant has failed to satisfy section 33(5)(b) and has failed to prove that this invoice relates to emergency repairs. Accordingly, I dismiss his claim for compensation in the amount of \$1,650.00

Invoice #18366

The Tenant claims \$138.27 of this invoice relates to emergency repairs. I find the following line items relate to emergency repairs.

KILZ primer	\$57.51
KILZ primer	\$51.51
TOTAL	\$103.02

Accordingly, I find the Tenant is entitled to \$1,100.25 in compensation for emergency repairs between May 12, 2016 and October 12, 2016:

INVOICE	AMOUNT of invoice	Amount Tenant claims relate to emergency repairs	Amount awarded
#724487	\$592.80	\$90.00	\$0.00
#724490	\$615.49	\$345.49	\$210.00
#724496	\$375.91	\$115.91	\$108.61
#355327	\$885.00	\$885.00	\$220.00
#355328	\$382.31	\$382.31	\$208.62
#18365	\$1,650.00	\$1,650.00	\$0.00
#18366	\$713.27	\$138.27	\$103.02
#355331	\$3,200.00	\$0.00	
TOTAL	\$8,414.78	\$3,606.98	\$1,100.25

Based on evidence of the parties I find, pursuant to section 19 of the *Act*, that the further find the Tenant overpaid his security deposit by **\$150.00**. The Tenant is therefore entitled to recovery of this sum.

I also find that the Tenant is entitled to recover the filing fee in the amount of **\$100.00**.

In total I award the Tenant the sum of **\$1,350.25** calculated as follows:

Total for emergency repairs	\$1,100.25
Overpayment of security deposit	\$150.00
Filing fee	\$100.00
TOTAL	\$1,350.25

The Tenant is to be credited the sum of **\$1,350.25** towards any rent outstanding.

I find that the Landlord failed to comply with my Interim Order; namely she and her agent, A.G., failed to:

1. hire the services of a qualified plumber to assess and repair the alleged water leak in the rental unit bedroom which the Tenant claims originates from the upstairs unit. The Landlord shall obtain from the plumber, a written report indicating the source of the leak, the required repairs, including, if necessary, repairs to the drywall, vapour barrier, and flooring; and,
2. hire the services of a qualified electrician to repair the light sockets in the bedroom and living room, and the thermostat in the bedroom.

I Order pursuant to sections 62, 65 and 67, of the *Act* that the Tenant be permitted to reduce his rent to **\$250.00** per month, **commencing November 2016**.

The Tenant shall continue paying \$250.00 per month until such time as the Landlord makes an Application for Dispute Resolution requesting that the \$500.00 per month rent be reinstated. In the event such an Application is made the Landlord must provide documentary evidence to confirm he complied with my December 8, 2016 Order; such evidence shall include:

1. a written report from a qualified plumber as to the source of the water leak in the rental unit bedroom as well as any required repairs, including, if necessary, repairs to the drywall, vapour barrier, and flooring;
2. a detailed invoice for the plumbing services provided in December 2016 as well as services rendered in compliance with the 1. above; and,

3. a detailed invoice confirming the Landlord retained the services of a qualified electrician to repair the light sockets in the bedroom and living room, and the thermostat in the bedroom.

The parties are cautioned to comply with the prior Decisions. While those decisions are clear, I remind the parties of the following:

Arbitrator Nazareth ordered that the Landlord must carry out all repairs and remain responsible for the cost of maintenance of the rental unit.

Arbitrator Hendrick ordered that any dispute related to work performed by the Tenant (outside of costs contemplated by section 33 (emergency repairs)) and payment owed by the Landlord for repairs and maintenance is not a term of the tenancy agreement; consequently, any claim the Tenant may have for work performed or costs incurred for repairs or maintenance which are *not* emergency repairs, must be made in the B.C. Provincial Court (Small Claims Division).

Conclusion

Pursuant to sections 33, 65(1) and 72 of the *Act* the Tenant is entitled to monetary compensation in the amount of **\$1,350.25** for the cost of emergency repairs and recovery of the filing fee. The Tenant is to be credited this amount towards any rent payments.

Pursuant to sections 62(3), 65 and 67 of the *Act*, the Tenant is entitled to reduce his rent to \$250.00 per month commencing November 2016 and shall pay this sum until further Order. To have the rent reinstated to \$500.00, the Landlord must make an Application for Dispute Resolution and must prove

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: February 15, 2017

Residential Tenancy Branch