



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNR, MNDC, OLC, ERP, RP, PSF, O

### Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to the landlords to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord, JD testified that he is the owner of the rental unit and has hired the corporate landlord which is represented by the personal landlord, SM to manage the property. The landlord SM confirmed that he represents both the corporate landlord and himself personally and primarily spoke on behalf of all of the landlords (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served

with copies of the landlord's 10 Day Notice, the tenant's application and their respective evidence.

### Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to a monetary award for damages?

Is the tenant entitled to a monetary award for emergency repairs?

Should the landlords be ordered to make repairs to the rental unit?

Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to reduce the amount of monthly rent for repairs agreed upon but not provided by the landlords?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties agreed on the following facts. This month to month tenancy began in December, 2014. The monthly rent is \$650.00 payable on the first of the month. A security deposit of \$325.00 was paid by the tenant at the start of the tenancy and is still held by the landlords.

There have been a total of four instances throughout the tenancy where water has leaked into the rental unit during the tenancy. There were different causes for each leakage incident, including negligence of an upstairs neighbour and water from the air conditioning unit. The tenant contacted the landlords to report each of these incidents. The landlords or a representative of the landlords attended at the rental unit to inspect the damage and arrange for repairs if they deemed it necessary.

On December 2, 2016, the tenant drafted an agreement to reduce the monthly rent by \$100.00 until specific repairs to the rental unit were completed. The landlord, JD signed the agreement prepared by the tenant. The tenant paid the reduced rent of \$550.00 for January and February, 2017.

The issues and repairs listed in the agreement are:

- Bathroom Fan needs to be replaced
- Ceiling tile damage from two floods coming from upstairs kitchen, dining room, bathroom, entrance hallway
- Cocking [sic] on all counters, tub, sinks, toilet.
- Air conditioner not properly installed [sic]
- Deck is a hazard
- Heater by Deck Door

The tenant testified that these deficiencies have affected her ability to enjoy her rental unit. She said that there have been four floods in the rental unit during her tenancy, the most recent occurring on December 26, 2016. She testified that she was unable to use the heater in the rental unit after the December flood due to the presence of water. She testified that the water damage in the carpet has limited the area of the rental unit that she can comfortably occupy. The tenant submitted photographs and videos of the rental unit into evidence in support of her application.

The tenant confirmed that some of the items listed in the agreement have been addressed. The tenant testified that the bathroom fan has been replaced. The tenant testified that some of the ceiling tiles have been replaced but there are others that require replacement. The tenant said that caulking has been done but she feels that there are other areas in the rental unit where it is still required. The tenant said the air conditioner still needs to be repaired. She said that the deck is unusable because the wood is soft and buoyant when she walks on the deck. The tenant testified that she was unable to use the heater when the rental unit had water damage as she was concerned that the electrical connection could cause additional damage.

The tenant's witness has experience in carpentry and testified that the outdoor deck was hazardous due to the water damage softening the lumber. She testified that using the outdoor deck would be dangerous and she said that the softened lumber would need to be fixed in order for the deck to be usable.

The tenant suggests that a monetary award in the range of \$2,035.00 for the loss in the value of her tenancy is appropriate under the circumstances, calculated by her as follows:

<b>ITEM</b>	<b>Loss of Value</b>
Loss of Use of Rental Unit from flooding (4 weeks)	\$650.00
Loss of Use of Deck (14 Months)	\$700.00
Loss of Use of Heat (2 Weeks)	\$325.00
Emergency Repairs (Cleaning by Tenant 18 Hours @ \$20.00/hour)	\$360.00
<b>TOTAL</b>	<b>\$2,035.00</b>

The tenant testified that she has spent a combined total of 18 hours cleaning the water damage to the rental unit during 2016. The tenant testified that she had contacted the landlord JD each time but has had to clean the rental unit herself. The tenant submitted a log of the time spent cleaning her rental unit. The tenant submits that she should be compensated for her labour as emergency repairs undertaken by the tenant.

The tenant testified that one of the additional terms of the agreement of December 2, 2016 is that the property owner JD will be the one who will attend at the rental unit to collect monthly rent in person. The tenant testified that JD has not made himself available when the tenant contacts him to come pick up the rent payment.

The landlord testified that the listed issues have been dealt with and the monthly rent should have reverted to \$650.00 as of January 1, 2017. The landlord testified that the tenancy is in arrears by \$200.00 as of February 6, 2017, the date of the hearing. The landlord said that some of the terms of the agreement are too vague to be enforceable and the agreement does not provide clear direction on when repairs are to be deemed completed.

The landlord testified that appropriate action was taken during each of the earlier incidents of leakage in the rental unit and that the tenant was paid damages when appropriate. The landlord testified that during the most recent incident of water damage on December 26, 2016 the tenant failed to advise the landlord in a timely manner and prevented the landlord from attending at the rental unit to inspect the damage refusing to deal with anyone but the property owner, JD.

The landlord testified that the repair items listed in the December 2, 2016 agreement have either been completed, substantially completed, or were not necessary in the first place. The landlord submitted into evidence a written report provided by a contractor hired by the landlords to inspect the rental unit. The written report states that:

- a number of the ceiling tiles have been replaced;
- the caulking has been completed and the tenant's request for additional work is for areas not affected by the water damage and are not necessary;
- the air conditioner is functionally installed but additional cosmetic work can be done;
- the deck cannot be commented on as the snow prevents any inspection; and
- the heater was never at issue and could have been used by the tenant without danger.

The landlord testified that the property owner JD has appointed the corporate landlord as his agent and the personal landlord is duly authorized to act on JD's behalf to deal with tenancy issues and collect rent. JD testified that he does not live at the rental property and cannot come to the property at the tenant's convenience. He testified that he has hired the corporate landlord specifically because he cannot devote all of his time to deal with the tenant.

#### Analysis- Notice to End Tenancy

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord testified that there was a rent arrear of \$100.00 at the time the 10 Day Notice was issued because the monthly rent amount of \$650.00 was reinstated for January, 2017 when the repairs requested by the tenant were completed. The tenant says that the rent remained at the discounted rate of \$550.00.

I find that the monthly rent for the disputed month was \$550.00 pursuant to the agreement entered by the parties on December 2, 2016. If the repairs have been completed I would expect some notice to be given to the tenant that the landlord intends to reinstate the higher rental rate. I do not find it appropriate for one party to amend a signed agreement and unilaterally determine that the terms of the agreement no longer apply without giving some form of notice to the other party. I find that the rent has been paid in full for the months of January and February, 2017. I therefore find that the landlord's 10 Day Notice of January 4, 2017 is cancelled and of no effect and this tenancy will continue until ended according to the *Act*.

#### Analysis – Monetary Award for Loss of Quiet Enjoyment and Loss of Value of Tenancy

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The parties have testified that there have been four separate incidents where water has leaked into the rental unit. The landlord testified that each of these instances had different causes. While I find that the incidents of water damage have affected the tenant's ability to enjoy the rental unit I do not find that the landlord has breached the tenant's right to quiet enjoyment through their action or inaction.

I do find that the incidents of water damage have resulted in a loss in the value of the tenancy for tenant. Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

While I find that the incidents of water damage has affected the tenant's ability to enjoy the rental unit there is undisputed evidence that the tenant has already received some monetary damages during the earlier instances of leakage. The tenant has testified that she was able to reside in the rental unit during the incidents of water damage. The parties testified that the deck is not a feature of the rental unit that would be used or enjoyed during the winter months when it is covered with snow. The parties also testified that the heater was not turned on by the tenant who was concerned that the water damage would cause further electrical damage. There is no evidence that the tenant was advised not to turn on the heater or that the heater was not functioning due to the water damage.

I find that the rental unit was affected by the water damage but not to such an extent that the tenant was unable to reside in the unit or significantly affect her daily life. I find that some of the loss was contributed to by the tenant who chose not to turn on the heater or deal with the landlord's agents. Under these circumstances, I am issuing a monetary award of a nominal amount, which reflects that the tenant did suffer some loss in the value of her tenancy agreement beyond that for which she has already been compensated. Based on the foregoing, I find that an appropriate amount of damages for the tenant's loss in the value of her tenancy is \$100.00.

#### Analysis – Rent Payment

I dismiss the tenant's application to have the landlords comply with the terms of the December 2, 2016 agreement by having the property owner, JD contact her to make arrangements to pick up the rent on a monthly basis. Paying the rent on time is the responsibility of the tenant. While parties can make an agreement about the method by which rent is to be paid, it is not reasonable to restrict a landlord from appointing an agent. It is unreasonable for the tenant to withhold rent unless the property owner attends in person at the tenant's convenience to collect rent payment. I dismiss the tenant's application for an order that the landlords comply with their agreement.

#### Analysis – Emergency Repairs

Emergency repairs are defined in section 33 of the *Act* as repairs that are urgent and necessary for the health and safety of occupants and the preservation of the property. The *Act* also provides that when emergency repairs are needed, prior to having emergency repairs made the tenant must make at least 2 attempts to telephone the person identified by the landlord as the contact person and provide the landlord reasonable time to make the repairs. A tenant may only claim the amounts paid for emergency repair if the tenant has complied with these requirements.

I do not find that the tenant's cleaning of the rental unit to be an emergency repair. The tenant has provided no evidence that the work she undertook was anything more than cleaning and maintenance. The tenant has failed to submit sufficient evidence to show that her cleaning was necessary for the health and safety of the occupants or the preservation of the property. The tenant's evidence that she only performed the cleaning for about an hour each day over the span of more than a week further indicates that this work was not urgent. The tenant's claim for costs of emergency repairs is dismissed.

#### Analysis – Repairs and Rent Reduction

Section 65 (1)(f) of the *Act* also allows me to reduce the future rent by an amount equivalent to the reduction in value of a tenancy agreement. I find that the parties have already come to an agreement as to the loss of value in the tenancy in the agreement of December 2, 2016. I find that the recent instance of flooding on December 26, 2016 did not create new issues but exacerbated existing issues. I accept the parties' testimony that some of the items listed in the December 2, 2016 agreement have been completed. Based on the testimony of the parties and the written evidence I determine that a repair order for the following outstanding issues is appropriate.

- a. Complete replacement of ceiling tiles in the rental unit that have been affected by water damage.
- b. Complete caulking in affected areas including the bathroom.
- c. Complete the cosmetic finishing and moulding of the air conditioner unit.
- d. Repair the deck or provide a written report from a licensed contractor confirming that the deck is safe to use and no repairs are necessary.

As I understand that winter weather conditions will adversely affect the ability to perform outside repairs, I order that the repairs be completed by March 31, 2017.

Pursuant to the parties' agreement, I order that the monthly rent for this tenancy from January, 2017 and onwards, is reduced by \$100.00 from \$650.00 to \$550.00. 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.

Should a dispute arise as to the extent to which the repairs ordered 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 this



decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with this decision once the landlord has undertaken the repairs ordered.

### Conclusion

The landlord's 10 Day Notice, dated January 4, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for compensation for emergency repairs is dismissed.

I issue a one-time monetary Order in the amount of \$100.00. As this tenancy is continuing, I allow the tenant to recover this \$100.00 award by reducing her monthly rent by that amount on her next monthly rental payment to the landlords. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00.

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.

I order that the landlord complete the following repairs by March 31, 2017.

- a. Complete replacement of ceiling tiles in the rental unit that have been affected by water damage.
- b. Complete caulking in affected areas including the bathroom.
- c. Complete the cosmetic molding of the air conditioner unit.
- d. Repair the deck or provide a written report from a licensed contractor confirming that the deck is safe to use and no repairs are necessary.

I order that the monthly rent for this tenancy be reduced by \$100.00 from \$650.00 to \$550.00 from January, 2017. 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.

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 14, 2017

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Residential Tenancy Branch