



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON-HYMARK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP FF LAT MNDC RP RPP RR

### Introduction

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

- an Order for repairs to be made to the unit pursuant to section 32 of the *Act*;
- recovery of the filing fee from the landlords pursuant to section 72 of the *Act*;
- an Order restricting the landlords' right to enter the rental unit pursuant to section 70 of the *Act*;
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- an Order for the landlords to provide services or facilities required by the law pursuant to section 65 of the *Act*; and
- a reduction in rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Act*.

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 landlords were represented at the hearing by J.J. (the "landlord"), while both tenants appeared at the hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 88 and 89 of the *Act*, I find that landlords were duly served with the Application and evidentiary package.

### Issue(s) to be Decided

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

Are the tenants entitled to a Monetary Order?

Are the tenants entitled to a return of the filing fee?

Should the rent be reduced?

Can the tenants restrict the landlords' right to enter the rental unit?

### Background and Evidence

Testimony was provided by both parties that this tenancy began on December 1, 2016. Rent is \$2,700.00 and a security deposit of \$1,350.00 continues to be held by the landlords.

The tenants are seeking a Monetary Order of \$2,500.00, as well as numerous orders for repairs to be performed on the property. Specifically, the tenants are seeking:

Item	
Bed replacement	\$350.00
Fridge Filter	78.13
Lights	22.39
Utility Bills	909.64
Loss of Enjoyment	1,139.84
<b>Total =</b>	2,500.00

The tenants explained that they moved into the rental unit in December 2016 and have struggled to control an infestation of ants since they began living in the property. They explained that the unit has been plagued with issues surrounding the plumbing, the insulation as well as mysterious opening and closing of doors which they attribute to someone entering the home without their consent.

The landlord maintained that this home did not have the issues that the tenants were seeking compensation for. Specifically, she noted that the windows were replaced in 2016, that the tenants, the landlords and the home's owner were the only persons with keys to the unit and that significant steps have been taken to rectify the issue around the ant infestation. The landlord said that neither she nor the property owner has seen these pests.

I will now list the items individually for which the tenants are seeking compensation:

***Broken Bed***

The tenants explained that they had to pay \$350.00 to replace a bed that was broken by a contractor hired by the landlords. This person was in the house performing plumbing works.

***Light Bulbs***

The tenants are seeking \$22.39 for outside lights that needed replacing.

***Fridge Filter***

The tenants alleged that the fridge filter needed replacing and that they were forced to spend \$78.13 to purchase a new filter

***Utilities***

The tenants provided copies of their hydro, gas and city of Kelowna utility bills to the hearing as part of their evidentiary package. The tenants maintained that they were being forced to pay exorbitant hydro and gas bills as a result of improper insulation and overall poor craftsmanship of the home. In addition, they stated that the home's owner was unfairly straddling them with a municipal utility bill for a time in which they did not occupy the rental unit. The landlord explained that the owner of the home replaced the windows in 2016 and extensive renovations of the home have recently been completed. Furthermore, she noted that the tenancy agreement signed by the landlords and the tenant makes no provisions for the landlords to pay for water, electricity, heat or garbage collection.

***Loss of Quiet Enjoyment***

Much testimony was provided to the hearing by the tenants concerning their loss of enjoyment of the property. Specifically, the tenants noted that they have lived with an infestation of ants, fluctuating heat in the showers, and an overall poor living experience associated with the tenancy leading them to suffer medical issues.

The tenants have provided extensive testimony surrounding the ant infestation they have been living with. The landlord explained that a pest control service has visited the premises on numerous occasions and refused to return to the property following their interactions with the tenants. Furthermore, the landlord stated that she attempted to

arrange for another pest control company to visit the property but the tenants did not want this company in their home.

Testimony from the tenants noted that the inconsistent heat in the shower has caused them to suffer burns and led them to be unable to use one of the showers entirely. In addition, they testified that the cold home has caused their entire family to become sick and made numerous rooms in the home inaccessible.

The landlord testified that she has taken significant steps to rectify any issues identified by the tenants. She provided copies of emails from various tradespeople who have attended the premises and who have performed work on the property.

It is noted on an invoice from a commercial heating, ventilation and air conditioning company which attended the premises that work was performed to "Increase the air flow. Most of the air flow issues are due to the duct design. Switched the fan to the on position on the thermostat. This will help to even out the heat throughout the house." Furthermore, this company noted in a follow up email with the landlords that "When our last tech was on site, he mentioned that the tenant was concerned about drafts coming through the light switches and fireplace but our tech could not feel anything. It was also around -20 at that time."

On February 10, 2017, the plumber wrote an email to the landlords explaining the steps he had taken to repair and replace the shower faucet so that it would no longer fluctuate hot or cold inadvertently. He wrote, "I installed with much difficulty, a Moen pressure balance faucet, slide bar 4 way telephone shower wand."

#### Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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. In this case, the onus is on the tenants to prove their entitlement to their claim for a monetary award.

The tenants are seeking \$2,500.00 in relation to their loss of enjoyment of the property, as well as a compensation for expenses they have incurred as a result of the tenancy.

### ***Broken Bed***

A receipt was provided to the hearing demonstrating their loss and the landlord acknowledged that the plumber had offered to repair the bed. As this loss stemmed directly from an action of the landlords; I will allow the tenants to recover for this loss.

### ***Light Bulbs***

The landlord acknowledged that these lights were an issue and that the owner had agreed to replace these. The tenants are therefore, entitled to recover the full amount associated with this expense.

### ***Fridge Filter***

The landlord explained that this fridge had recently been replaced and that the tenants simply needed to reset the fridge. The tenants explained that nobody had informed them that this was necessary. As the tenants did incur an expense related to the tenancy and were unaware that the fridge had a new filter, I will award them half of the amount they are seeking. The tenants are entitled to recover \$39.06.

### ***Utilities***

I find that both parties have raised valid issues related to this matter and will award the tenants \$134.64 which is the amount requested on the municipal utility bill dated from October 1, 2016 to December 31, 2016. This tenancy began in December 2016 and it is therefore unfair to burden the tenants with a bill for time they were not in the rental unit. The tenants are not entitled to recover the costs associated with the hydro or gas bills, as evidence was provided to the hearing that they entered in to this tenancy agreement under the agreement that these features were not included in the rent.

### ***Loss of Enjoyment***

No medical evidence was provided by the tenants demonstrating that any illness they suffered was a result of the owner's non-compliance with the *Act*. Furthermore, it is apparent that the landlords have made numerous attempts to make the lives of the tenants more comfortable and sincere efforts have been made by the landlord to attend to any deficiencies in the home that have been identified by the tenants. As a result of the evidence before me, I am dismissing the tenant's claims associated with loss of quiet enjoyment of the rental unit.

I will award the tenants a Monetary Order of \$596.09 for the losses they have suffered and expenses they have incurred.

As the tenants were partially successful in their application, they may recover \$50.00 from their filing fee.

### Emergency Repairs

The tenants have requested an Order for the landlord to perform repairs to the unit pursuant to section 32 of the *Act*, as well an Order for the landlords to provide services or facilities required by the law pursuant to section 65 of the *Act*.

Section 32 states:

**32** (1) A landlord must 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.

Much testimony and evidence has been presented by both sides concerning the property in question. The landlord explained that significant steps have been taken by the owner of the home to attend to any shortcomings in the home that the tenants have identified. Specifically, the shower faucet has been replaced, heating specialists have attended the home and pest control services have performed work on the property four times. Furthermore, the landlord testified that extensive renovations were recently performed on the home. I am satisfied that the landlords have provided a residential property that is in an adequate state of decoration and repair, and I decline to issue an Order for the landlords to perform repairs on the unit.

### Rent Reduction and Orders to Repair

Section 65 of the *Act* notes that the landlord is to provide services or facilities required by the law. This section stipulates that if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make orders directing the landlord to perform these works, or to compensate the tenant.

Based on the evidence and testimony provided at the hearing, I am satisfied that the landlords have taken all reasonable steps to ensure that all services or facilities provided to the tenant are adequate and to ensure that the tenants have a positive living experience. I find no reason to award a reduction in rent or to order repairs to be performed.

### Landlords' Right to Enter Rental Unit

The tenants testified that on multiple occasions they have returned to the rental property and found the doors ajar. They stated that they would like to restrict the landlords' right to enter the rental unit and would like to change the locks to the rental unit to prevent unauthorized entry.

The landlord testified that she has never entered the property without prior authorization and had no reason or desire to. Furthermore, she explained that the only persons with keys to the unit are the owner, the landlords and the tenants.

Insufficient evidence was presented to the hearing indicating that an order of this nature would be necessary. The landlord explained that she has no reason to be near the property and in her written submissions provided to the hearing as part of her evidentiary package she noted on paragraph 5 of page 3 that she had requested the tenants to only communicate with her via email.

I find there is insufficient evidence that the landlords should be ordered to be restricted from entering the rental unit provided they comply with section 29 of the *Act*. The tenants' application to restrict the landlords' right to enter the rental unit and to change the locks is dismissed.

### Conclusion

The tenants are awarded a Monetary Order of \$596.09.

Item	
Bed replacement	\$350.00
½ Fridge Filter	39.06
Lights	22.39
Utilities	134.64
Partial Filing Fee	50.00
<b>Total =</b>	<b>\$596.09</b>

The tenants are provided with formal Orders in the above terms. Should the landlords fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

The tenants' application for repairs to be performed on the rental unit is dismissed.

The tenants' application for a reduction in rent is dismissed.

The tenants' application restricting the landlords' right of entry to the rental unit is dismissed.

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: March 22, 2017

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Residential Tenancy Branch