



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, RR, OLC, MNDC, FF

### Introduction

On April 20, 2017, the Tenant applied for dispute resolution seeking the following:

- for an order that the Landlord to comply with the *Residential Tenancy Act (the Act)*, regulations, or tenancy agreement.
- for a monetary order for money owed or compensation for damage or loss.
- for a reduction in rent for repairs, services, or facilities agreed upon but not provided.
- for an order that the Landlord make repairs to the rental unit.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained.

The Tenant confirmed he received the Landlord's 24 pages of documentary evidence.

The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants testified that they served a copy of their documentary evidence to the Landlord on April 20, 2017, at the Landlord's office.

The Landlord testified that he did not receive the Tenant's evidence. A summary of the Tenant's 10 pages of evidence was provided to the Landlord and he stated he was familiar with the file and the Tenant's documents and wanted to proceed.

The hearing proceeded and the evidence of the Landlord and Tenant was admitted and considered.

After the hearing concluded, photographic evidence from the Tenant received by the Residential Tenancy Branch on May 18, 2017, was added to the file. This evidence was not before me at the time of the hearing, and was not confirmed as received by the Landlord. Pursuant to the Residential Tenancy Rules of Procedure, the evidence is also late. The Tenant's photographic evidence is not accepted and was not considered in this Decision.

#### Issues to be Decided

- Is the Tenant entitled to an order that the Landlord to comply with the Act, regulations or tenancy agreement.
- Is the Tenant entitled to an order for the Landlord to make repairs and/or emergency repairs to the unit?
- Is the Tenant entitled to compensation for damage or loss?
- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?
- Is the Tenant entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties testified that the tenancy began on November 1, 2010, and is a month to month tenancy. Rent in the amount of \$1,300.76 is due on the first day of each month. A security deposit of \$549.00 was paid by the Tenant to the Landlord.

The Tenants testified that in December 2016, they detected a bad smell in the corner of the Livingroom. The Tenants reported the smell to the Landlord who attended and found and removed some dead animals in the wall cavity.

The Tenants testified that the smell persisted. The Tenants again reported the smell to the Landlord. In March 2017, and April 2017, the Landlord attended and cut away part of the living room wall and removed dead rats from behind the drywall and insulation. The Tenants submitted that there is still a smell in the Livingroom and they want compensation for loss of use of the Livingroom and an order for the Landlord to fix and

repair the problem. The Tenants are seeking \$520.00 per month in compensation for loss of use of the living room and kitchen. They submitted that their request for compensation is based on a loss of use of 40% of the rental unit.

The Tenants testified that they don't feel the Landlord is doing enough to deal with the problem. The Tenants testified that the Landlord is doing work on other units and they believe that the work is related to the problem they are having with the smell.

The Tenants provided copies of three letters where they reported the problem to the Landlord in January 2017, March 2017, and April 2017.

In response, the Landlord testified that they have been actively dealing with a rat problem prior to the complaints they received from the Tenants. The Landlord provided documents indicating that rodent bait traps were added and replaced on the property in November and December 2016.

The Landlord testified that they responded to the Tenant's complaint on December 12, 2016, and attended the unit. The Landlord testified that they have been actively dealing with the issue in January 2017, and February 2017.

The Landlord testified that some dead animals were removed from behind the wall of the unit, and the Tenants were provided with an odor block. The Landlord provided a copy of a document indicating an odor block was provided to the Tenants.

After receiving further complaints from the Tenants, the Landlord testified that they sent a pest control company to investigate the problem on the following dates:

- February 3, 2017
- February 9, 2017
- March 16, 2017
- March 24, 2017

The Landlord provided copies of documents showing that the Tenants unit was inspected in January, February, March, and April 2017. In March, the Landlord provided the Tenants with an odor absorbing bag.

On March 16, 2017, the Landlord cut into the wall and a dead rat was found. On March 24, 2017, pest control found and removed a rodent carcass.

The Landlord submitted that they are currently doing further investigation to resolve the issue. He submitted that there may be a gap between the floor that rats are accessing and it may contain more dead rats. The Landlord testified that a wall removal company is attending the property and a [pest control company will be inspecting the property for dead rats.

The Landlord submitted that they have done everything possible to deal with the issue. He submitted that it is difficult to diagnose and access the problem because of the walls. The Landlord testified that he has been to the rental unit many times and that the living room is still being used by the Tenants.

The Landlord submitted that he has provided regular updates to the Tenants and he has dealt with their complaints. He testified that he provided the Tenants with his email address to report issues.

Section 32 of the Act states that 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.*

Section 65 of the Act states 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 order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

### Analysis

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

*Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:*

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and,*
- *Damage to a person, including both physical and mental*

*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment **even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*** [my emphasis]

Section 32(1) of the Act states that 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 the tenant.*

Based on the documentary evidence and oral testimony of the parties provided during the hearing, and on a balance of probabilities, I make the following findings:

I find that the Tenants have been affected by the smell of dead rodents in varying degree from December 2016, up to and including May 2017. I find that the bad smell of the dead rodents deprived the Tenants of use of the Livingroom. I also find that their quiet enjoyment has also been affected by having the Landlord and pest control into the unit to investigate and remove the wall on a number of occasions.

I find that the Landlord has been responsive to the Tenant's complaints and took prompt action to investigate and try to resolve the problem. I find that the Landlord was setting bait traps and the rats found ingress into the rental property and died.

I find that the Tenants are entitled to compensation in the form of an abatement of rent for the portion of the rental unit that was affected for six months from December 2016, until the end of May 2017.

I accept the Tenants submission that they lost use of the Livingroom. I find the Tenants claim for \$520.00 per month is reasonable for a claim of this type.

With respect to the Tenants request for a repair order, I accept the Landlord's testimony that further investigation and repair of the walls and floor area on the property is currently underway. If the issue has not been resolved, the parties are encouraged to

try to reach an agreement on the matter. However, if an agreement cannot be reached, the Tenants have leave to reapply for compensation.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$3,220.00 for loss of quiet enjoyment and the cost of the Application. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Tenants are awarded compensation for loss of quiet enjoyment of the rental unit.

I grant the Tenants a monetary order in the amount of \$3,220.00.

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: June 5, 2017

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Residential Tenancy Branch