



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEAK PROPERTY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes ERP, RP, OLC, RR, MNDC, FF

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- an order for emergency repairs;
- an order that repairs be made to the unit, site or property;
- an order for the landlord to comply with the *Act*, regulations or the tenancy agreement;
- an order to allow the tenant to reduce the rent for repairs, services or facilities that were promised but not provided;
- a monetary order for money owed or compensation or damage or loss under the *Act*, regulation or tenancy agreement; and
- recovery of the filing fee paid for their application from the landlord.

The landlords two agents (the "landlord") appeared at the teleconference hearing and gave affirmed testimony. The tenant also appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

The tenant indicated that there was no longer a need to obtain an order for emergency repairs. Therefore, I dismiss this claim.

The tenant is claiming for the loss of use of the master bathroom and bedroom. The tenant testified that there is mold on the bathroom ceiling that smells so strong that the tenant is not able to sleep in the master bedroom. The tenant is also seeking an order for repairs to remediate what the tenant believes is a serious mold issue.

The landlord denied that there was a mold issue that required remediating.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a partial resolution of their dispute.

During the course of the hearing, the parties reached an agreement to settle the matter of the tenant's claim relating to the loss of use of the master bathroom and bedroom on the following conditions:

1. The parties agree that the landlord will provide the tenant with the name of an expert certified in mold remediation to inspect the mold in the master bathroom and provide a report. The landlord will promptly provide the tenant with a copy of the report once the landlord receives one.
2. The parties agree that the inspection is to be completed by June 30, 2017.
3. The parties agree that after the inspection report is completed, the landlord will retain a contractor to complete any remediation or repairs recommended by the certified expert in their report.
4. Within two weeks of receiving a copy of the report, the landlord will provide the tenant with the name of the landlord's contractor and the timeline for the completion of any remediation or repairs that have been recommended.
5. The parties agree to the dismissal of the tenant's claims relating to the master bathroom and bedroom, with leave to re-apply after the inspection report is completed.

These particulars comprise the full and final settlement of all aspects of the dispute at this hearing relating to the loss of use of the master bathroom and bedroom. The parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. The parties confirmed that they understood the final nature of this settlement of the tenant's claim relating to the master bathroom and bedroom at this hearing, with the possibility of a further application by the tenant for the same claim.

The settlement agreement reduces the tenant's monetary claim to \$5,700.00.

#### Issues to be Decided

- Is the tenant entitled to an order that repairs be made to the unit, site or property?
- Is the tenant entitled to an order for the landlord to comply with the *Act*, regulations or the tenancy agreement?
- Is the tenant entitled to an order allowing the tenant to reduce the rent for the repairs, services or facilities that were promised but not provided?
- Is the tenant entitled to a monetary order for money owed or compensation or damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to recovery of the filing fee paid for their application from the landlord?

#### Background and Evidence

The undisputed evidence established that the tenant entered into a one year fixed term tenancy starting on October 1, 2016 with an option to continue the tenancy on a month to month basis after the fixed term has ended. Rent in the amount of \$1,900.00 is due on the first day of each month. The tenant paid a security deposit in the amount of \$950.00.

The tenant is seeking a monetary order in the amount of \$5,700.00 for loss of use of the main bathroom, dishwasher and patio, all of which required repairs that were not completed in a timely fashion. The tenant is seeking compensation in the amount of \$1,900.00 for the loss of each item.

The tenant is also seeking an order to allow the tenant to deduct an amount from the rent for the loss of the use of the facilities in their unit.

The tenant is also seeking an order for the landlord to complete repairs to the exterior of the unit in the area of the patio due to safety concerns.

The tenant is also seeking to recover the \$100.00 filing fee for their application from the landlord.

The tenant testified that when the tenant moved into the unit, the property manager promised to complete a list of repairs by November 1, 2016. The tenant testified that he discussed the repairs with the property manager at the time of the move in inspection on September 30, 2016. A copy of the inspection report was submitted as evidence. The tenant testified that the list of repairs that were promised were noted on the move in inspection report, however, there is no actual list of repairs noted on the report. The report, however, indicates that the dishwasher was leaking badly and that the main bathroom was in very poor condition. The tenant's complaints about the main bathroom are consistent with what is written on the report. The inspection report was signed by the tenant and the property manager.

#### Main Bathroom

The tenant is claiming \$1,900.00 for the loss of use of the main washroom for the period of January 30, 2017 to April 16, 2017. The tenant testified that he was first contacted by a plumber to repair the main bathroom on or about the end of December 2016 or the beginning of January 2017. The tenant testified that the plumber wanted to attend on New Year's Day which was not a convenient time for the tenant who refused the contractor access to the unit. The tenant testified that this was the only time the tenant denied the contractor access to the unit.

The tenant testified that on January 30, 2017 the contractor demolished the bathroom and left the bathroom in a state that made it unusable. The tenant testified that he was not able to use the toilet in that washroom since he moved in, but the rest of the bathroom was useable up until it was demolished. The tenant testified that the bathroom became useable again on April 16, 2017 when the repairs were finally completed. The tenant had use of the facilities in the bathroom in the master bedroom during the repairs.

The landlord testified that they were using a property manager who was personally dealing with the tenant and communicating to the landlord about the repairs needed. The landlord testified that they received an email dated October 11, 2016 from the property manager that included a list of repairs. A copy of the email was not submitted by the landlord although they were given a further opportunity to do so for this hearing.

The landlord testified that they sent the property manager a money transfer for \$2,550.00 which the property manager received on November 8, 2016. The landlord believed that the money was to be used to do the repairs in the main bathroom. The landlord testified that the master bathroom had undergone renovations in May 2016 such that the landlord believed that the money sent was for the repairs to the main bathroom. The tenant testified that all the items were repaired except for the main bathroom.

The tenant sent an email to the landlord on February 7, 2017 requesting specific repairs including, but not limited to, the main bathroom and exterior.

The landlord testified that all the repairs that were requested by the previous property manager were completed by the end of December 2016, except the main bathroom.

The landlord testified that they terminated their relationship with the property manager who then refused to allow the landlord to continue with the contractors. The landlord testified that this is the reason that the work stopped on January 30, 2017. The landlord testified that they then had to obtain further quotes to hire another contractor which they obtained on or about mid-February 2017.

The landlord testified that the tenant insisted to be present for the repairs which meant that the repairs could only be done on weekends which contributed to the delay in completing the repairs. The tenant denied these allegations. The landlord submitted an email dated January 11, 2017 between the tenant and the former property manager. The email indicates that the tenant requested that work be done only on weekends as he did not want anyone unattended in his home. The landlord acknowledged, however, that the delay is also attributable to the former property manager and the new contractors.

#### Dishwasher

The tenant is seeking compensation in the amount of \$1,900.00 for loss of the use of the dishwasher which was broken from October 1, 2016 when the tenant moved in until March 3, 2017, when it was repaired. The tenant described the dishwasher as having such a bad leak that the tenant could not use it. The dishwasher is described in the condition inspection report as leaking badly.

The landlord testified that they first became aware of the issue with the dishwasher on February 9, 2017 after receiving an email about the problem. The landlord testified that a new dishwasher was installed as of March 3, 2017.

#### Patio Door

The tenant is seeking compensation in the amount of \$1,900.00 for not having use of the patio since moving into the unit until on or about May 27, 2017. The tenant testified that the patio door did not open properly and required repairs which were not done. The tenant testified that after being without the use of the patio for 8 months, the tenant did the repairs himself on or about May 27, 2017.

The landlord testified that they were not aware of any problem with the patio door until it was raised at the previous hearing. There is nothing in the condition inspection report that refers to the patio door. However, the tenant does mention the patio door in his email dated February 7, 2016 setting out the various repairs needed. The tenant states in his email that the patio door does not open properly thereby posing a fire hazard in the event of fire.

#### Exterior

The tenant is seeking an order for the landlord to repair the deck railings and fascia boards in the area of the patio. The tenant provided photographs showing the condition of the exterior patio area. The tenant testified that the deck railings are rotten and being held up by shelf brackets; the fascia boards are rotten and the gutters are falling off the house. The tenant argued that the condition of the deck railings and fascia boards make the patio area unsafe. The tenant refers to these concerns in his email to the landlord dated February 7, 2017.

The landlord did not address the exterior of the building in their evidence.

Overall, the landlord argued that they responded to the need for repairs in a timely fashion once they received notice of the problems.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Policy Guideline #1 states that the landlord is responsible for maintaining appliances in a good state of repair. The guideline also states that the landlord is responsible for maintaining fences or other fixtures erected by him or her.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

Pursuant to Policy Guideline #16, loss of access to any part of the residential property under a tenancy agreement is included in the types of damage or loss contemplated by section 67 of the *Act*. 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.

In this case, the burden of proof is on the tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

### Main Bathroom

I find that there is sufficient evidence to satisfy me that the tenant suffered a loss of use of the main bathroom from January 30, 2017 to April 17, 2017 based on the undisputed evidence of the parties that there was a delay in completing the repairs. I find that there is sufficient evidence to satisfy me that the delay was mostly attributable to the circumstances faced by the landlord in terminating their relationship

with the former property manager and having to find a new contractor. While I accept that the tenant did place some restrictions on access to his unit for repairs, I find that there is not sufficient evidence to satisfy me that the tenant's stipulations contributed to any meaningful delay. Therefore, I find that the tenant is entitled to compensation for the loss of use of the main bathroom from January 30, 2017 to April 17, 2017.

In awarding compensation, I have taken into account the fact that the tenant still had access to other bathroom facilities in the unit during the repairs. I find that there is not sufficient evidence to satisfy me that the value of the tenant's loss of the main bathroom is \$1,900.00. However, I find that there is sufficient evidence to satisfy me that the value of the tenant's loss is 5% of the rent for the period between January 30, 2017 to April 17, 2017 ( $\$1,900.00 / 31 \times 1 \text{ day} = \$61.29 \times 5\% = \$3.06$  for January 30, 2017); plus  $\$1,900.00 \times 5\% = \$95 \times 2 \text{ months}$  for February and March 2017 = \$190.00; plus 17 days to April 17, 2017 ( $\$1,900.00 / 30 \times 17 \text{ days} = \$1,076.66 \times 5\% = \$53.83$ ). Therefore, I find that the tenant is entitled to a monetary award in the amount of **\$246.89**.

#### Dishwasher

I find that there is sufficient evidence to satisfy me that the landlord did not maintain the dishwasher in a good state of repair from October 1, 2016 to March 3, 2017.

I find that there is sufficient evidence to satisfy me that the property manager was aware of the problem on September 30, 2016 as the condition inspection report states that the dishwasher was leaking badly. I accept that the landlord did not become aware of the problem with the dishwasher until February 9, 2017 when the tenant sent his email to the new property manager. The fact that there was some form of communication breakdown between the property manager and the landlord, does not excuse the landlord from their obligation to comply with the *Act* and maintain appliances in a good state of repair. Therefore, I find that the tenant is entitled to compensation for loss of use of the dishwasher from October 1, 2016 to March 3, 2017.

I find that there is sufficient evidence to value the tenant's loss at 3% of the rent for each of the months of October 2016 to February 2017 ( $\$1,900 \times 3\% = \$57 \times 5 \text{ months} = 285.00$ ) plus 2 days up to March 2, 2017 ( $(\$1,900.00 / 31 \text{ days} \times 2 \text{ days} = \$122.58) \times 3\% = \$3.68$ ). Therefore, I find that the tenant is entitled to a monetary award of **\$288.68**.

#### Patio Door

I find that there is sufficient evidence to satisfy me that the tenant suffered a loss of use of the patio as a result of the door needing repairs that were not done. Although the landlord testified that they were not aware of the patio door problem until the previous hearing, I find that there is sufficient evidence that the landlord was made aware of that problem based upon the email from the tenant dated February 7, 2017 which refers to the patio door as needing repair. Therefore, I find that the landlord had notice of the problem as early as February 7, 2017 and that no steps were taken to address the need for repairs in the interim. I have also taken into consideration the fact that there is no mention of the patio door not working properly in the condition inspection report. As such, I find that there is insufficient evidence to satisfy me that the tenant discussed the patio door with the property manager to support a finding that the landlord was aware of the problem prior to February 7, 2017. I accept the tenant's testimony that he fixed the patio door himself on or about May 27, 2017 after not having access to the patio for 8 months. I find that the tenant is entitled to compensation for loss of use of the patio for the period of February 7, 2017 to May 27, 2017.

I find that there is insufficient evidence to satisfy me that the value of the tenant's loss is \$1,900.00. However, I find that there is sufficient evidence that the value of the tenant's loss is 5% of the rent for the period between February 7, 2017 to May 27, 2017 ( $\$1,900.00 / 28 \times 7$  days to February 7, 2017 = \$475.00 x 5% = \$23.75) plus ( $\$1,900.00 \times 2$  months for March and April 2017 =  $\$3,800.00 \times 5\% = \$190.00$ ) plus ( $\$1,900.00 / 31$  days x 27 up to May 27, 2017 =  $\$1,654.83 \times 5\% = \$82.74$ ). Therefore, I find that the tenant is entitled to a monetary order in the amount of **\$ 296.49** for the loss of use of the patio.

#### Exterior

I find that there is sufficient evidence to satisfy me that there are safety concerns regarding the condition of the exterior railing and fascia boards in the area of the tenant's patio. In making this finding, I have taken into consideration the fact that the photos of the patio area submitted as evidence show rotting wood lending credibility to the tenant's claims. I find, however, that there is insufficient evidence to conclude that the exterior does not comply with the health, safety and housing standards.

As the landlord is responsible to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards by law pursuant to section 32 of the *Act*, I find that there is sufficient evidence to satisfy me that the condition of the patio as shown in the photographs requires an inspection to determine whether the condition of the exterior complies with the health, safety and housing standards. Therefore, I find that the tenant is entitled to an order that requires the landlord forthwith to have an inspector from the city evaluate the condition of the patio exterior to determine if any remediation is required. I order that the landlord provide a copy of the inspection report to the tenant upon its completion. In the interim, I dismiss the tenant's claim and the tenant is permitted to re-apply after the inspection report is completed.

As I have awarded the tenant compensation for the loss of use of the main washroom, dishwasher and patio pursuant to Section 67 of the *Act*, I do not find that it is necessary to address the tenant's claim for reduced rent pursuant to section 65 of the *Act*. In making this finding I have taken into consideration the fact that the repairs that the tenant was seeking as a basis for reduced rent have been completed and settled. Therefore, I dismiss the tenant's claim.

As the tenant's application has been substantially successful, I find that the tenant is entitled to recover the \$100.00 filing fee paid for their application from the landlord

Based upon the foregoing, I find that the tenant is entitled to a total monetary award in the amount of **\$932.06** which includes the filing fee. The tenant is permitted to deduct the amount owing by the landlord from future rent due to the landlord, pursuant to section 72(2) of the *Act*.

#### Conclusion

I order the parties to comply with the terms of their settlement agreement described above.

The tenant's application for an order for emergency repairs is dismissed as it is unnecessary.

The tenant's application for an order that the landlord comply with the *Act*, regulations or tenancy agreement is dismissed for the reasons given above.

The tenant's application for an order allowing the tenant to reduce the rent is dismissed as it is unnecessary.

Pursuant to s.67 of the *Act*, the tenant is granted a monetary Order in the amount of \$932.06, for compensation and the filing fee, which must be served on the landlord as soon as possible. The tenant is permitted to deduct the amount owing by the landlord from future rent payable to the landlord. Should the tenant choose not to do so, and the landlord fails to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order that the landlord will have an inspector from the city evaluate the condition of the patio exterior to determine if any remediation of the tenant's patio forthwith. I order the landlord to provide a copy of the inspection report to the tenant upon its completion. In the interim, I dismiss the tenant's claim and the tenant is permitted to re-apply after the inspection report is completed.

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 09, 2017

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Residential Tenancy Branch