



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes: ERP RP MNDC RR

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord do emergency repairs pursuant to section 33; and
- b) That the landlord repair and maintain the property pursuant to section 32; and
- c) That the landlord protect their peaceful enjoyment by controlling behaviour of other tenants;
- d) Compensation for loss of peaceful enjoyment and no repairs; and
- e) Recovery of their filing fee.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act and has not protected their peaceful enjoyment? Are they entitled to an order to repair and compensation for repairs and loss of their peaceful enjoyment and to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in August 1, 2010, rent is currently \$507 a month (based on income) and a security deposit of \$450 was paid. The tenant has been complaining of a nasty smell in their washroom which allegedly comes from the unit upstairs where the tenants are allegedly smoking marijuana. The timeline of events was submitted.

- Early April 2017, the tenant informed the resident manager of the smell. The manager visited his suite and did not detect a smell. The tenant in the upper unit denied smoking.
- May 2017, the tenant reported the smells in the bathroom again. The manager visited suites around the tenant's suite and did not find anything. He went to the upper unit and found they were burning a 'smudge'; it was taken for testing and the tenant was told not to burn this substance again.

- June 27, 2017, the landlord wrote a warning letter to the upstairs unit to stop any type of smoking in the unit or on the balcony.
- In mid July, this tenant reported marijuana smell again. The landlord offered to transfer them to the suite next door but the tenant refused. Subsequently the tenant requested a transfer to another of the landlord's buildings. The landlord made another offer in reply to the tenant's demands and offered to pay all moving expenses as well. They wanted him to look again at the unit after carpeting and paint was completed but he refused.

In the hearing, the tenant said he wanted the smell problem fixed within a reasonable time by contractors hired by the landlord; he said he knew of one contractor who had visited him who said it could be fixed. When requested, he refused to give that contractor's information to the landlord.

The landlord said they had engineers look at the problem but they said it was hard to determine the origins of the smell and it would need further investigation. They may not be able to fix it. That was why they offered other units to the tenant so their problems would be solved quicker. The tenant was adamant that he did not want to move for various reasons. He said he wanted an Order to Repair within a reasonable time plus compensation for the suffering his family has undergone since April, 2017. The smell in the bathroom has made his children and him sick.

Included with the evidence are letters from both parties, a chronology of events from the tenant, several letters setting out options and offers and refusals. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

Section 32 of the Act provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) Complies with the health and 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.

Paragraph 32(1) (b) above is intended to take into account the fact that older units will not and are not expected to be of the same standard as a newly constructed unit and that the unit must only meet the standard of being suitable for occupation and comply with health, safety and housing standards required by law. I find insufficient evidence that this building does not meet health, safety and housing standards but I find sufficient evidence that there is a smell of smoking and/or marijuana leaking into the bathroom of the tenant's unit. This is a no smoking building and I accept that tenants should expect to be free of second hand smoke in the units. The tenant requests the venting be somehow repaired so his family does not suffer from this second hand smoke and he also wants compensation from the landlord for their suffering from April 2017 to date..

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

I find from examining the chronology of the events and evidence that the landlord was somewhat negligent in protecting the quiet enjoyment of the tenant contrary to their responsibilities under section 28 of the *Act*. Although the landlord was informed in April 2017 of the upper tenant's offending behaviour, they delayed until June 27, 2017 to write a warning letter to the tenants in the upper unit. The landlord said they had not proceeded with an effort to end that tenancy for they felt they did not have sufficient proof. However, I find this tenant's family are prepared to witness about the marijuana smoking and even kept a chronology of the incidences. Furthermore, I find in the evidence some others who allegedly witnessed the smoking such as the second engineer and the resident manager who allegedly was assaulted by the tenants in the upper unit (see the tenant's letter dated August 29, 2017). I find no evidence showing the landlord has tried to gather proof and proceed with ending the tenancy. Therefore, I find the tenant entitled to some compensation for the lack of protection of his family's peaceful enjoyment.

Considering the monthly rent is \$507 based on his income, I find the tenants' request for \$3,000 compensation is excessive especially since the smell occurs in the bathroom and does not preclude the tenants from occupying any other part of the rental unit. Also the tenants have not demonstrated any significant damage or monetary loss. In the circumstances, I find the tenant entitled to compensation of \$50 a month from April to November 2017 for their limited use of the bathroom. This totals \$400 (8 x \$50).

Although the tenant claims his family are violently ill and this is impairing their health and lifestyle, I find it improbable that the effect on his family is as serious as he alleges since he

refused to mitigate his damages by moving to any other unit. The landlord in good faith has offered him choices and offered to pay all the moving expenses. I find the landlord has been holding a townhouse unit open for him and losing rent. Since the tenant adamantly refused it, I advised the landlord that he was free to rent that unit and avoid further rental losses. I note the landlord might also consider ending the tenancy of the offending tenants in the upper unit as a solution..

After further discussion, an Order for Repair was agreed by the landlord, namely that they would retain a professional contractor to investigate the cause of the smell within two weeks of this date and have it repaired, if possible, within a month, that is by December 15, 2017.

**Conclusion:**

I find the tenant entitled to compensation of \$400 and to recover his filing fee for this application (total \$500). The tenant is at liberty to reapply if the repair is not successful.

**I HEREBY ORDER THAT THE LANDLORD retain a professional contractor to investigate the cause of the smell in the tenant's unit by November 22, 2017 and have it repaired if possible by December 15, 2017.**

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: November 09, 2017

---

Residential Tenancy Branch