



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR FFT LRE OLC RP

### 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 33 of the *Act*;
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*;
- an Order restricting the landlord's 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 directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*; and
- a cancellation of the landlord's 10 Day Notice for unpaid utilities pursuant to section 46 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 landlord was represented at the hearing by his counsel, K.H. (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 landlord was duly served with the Application and evidentiary package.

Following opening remarks, the landlord asked to withdraw the 10 Day Notice to End Tenancy served on the tenants on October 5, 2017. I explained to the landlord that withdrawing this notice would automatically cancel the Notice to End Tenancy. Counsel for the landlord explained that he understood this and wished to proceed with the withdrawal. The tenants' application will focus solely on their application for a monetary award, for Orders directing the landlord to comply with the *Act* and restricting the

landlord's access to the property, for repairs to the rental unit, and for a return of the filing fee.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Should the landlord be directed to comply with the *Act*?

Should conditions be set on the landlord's right to enter the rental unit?

Can the tenants recover the filing fee?

Should the landlord be directed to make repairs to the rental unit?

#### Preliminary Issues – Settlement

During the course of the hearing, counsel for the landlord acknowledged that the tenants and the landlord had a difficult relationship which had resulted in some conflict. Counsel advised the hearing that the landlord had no objection for Orders directing him to comply with the *Act*, or restricting his right to enter the rental unit.

Furthermore, the landlord agreed to make a payment to the tenants of \$650.00 reflecting a portion of their application for a monetary award. Specifically, he did not object to a payment of \$300.00 for cleaning and \$350.00 for loss as a result of a broken fridge and freezer.

As these issues have been settled, I will solely focus on the remainder of the tenants' application for; a monetary award, for return of the filing fee and for an order directing the landlord to make repairs to the rental unit.

#### Background and Evidence

The tenants explained that this tenancy began in November 2015. Rent is \$1,856.50 and security and pet deposits of \$900.00 each, collected at the start of the tenancy; continue to be held by the landlord.

Part of the tenants' application for a monetary award was discussed above. Only the items left for consideration will be listed below. Specifically, the tenants sought the following monetary relief:

Item	Amount
Loss of Storage @ \$50.00/month from November 2015 to October 2017 (23 months)	\$1,150.00
Loss of gas fireplace @\$100.00/month from November 2015 to August/September 2016 (9.5 months) & Propane tank rental	950.00
Lost Wages for meeting with the landlord	169.68
<b>Total =</b>	<b>\$2,269.68</b>

During the hearing, the tenants explained that in addition to an application for a monetary award, they were seeking an Order directing the landlord to repair holes in the walls through which rodents had entered the premises, and an order directing the landlord to hire a professional pest control company. The tenants said they wished for a professional pest control company to attend the home and eradicate the various rodents that were already present in the rental unit.

The tenants explained that they had originally rented the home because of the landlord's promise of a working gas fireplace. They said that because of allergy issues, a gas fireplace was preferred to other heat sources, and that despite several assurances from the landlord that the fireplace would be in working order, they were left without its use for nearly 1 year.

In addition to their application seeking compensation for loss of a fireplace, the tenants were seeking a monetary award related to their loss of storage in the rental unit. The tenants said that because of the various issues around rodent infestation that they had lost numerous personal items, and were required to use the garage as a storage area, versus the designated storage area in the home.

The landlord disputed that any further compensation should be given to the tenants because he argued that use of the fireplace was not a term of the tenancy agreement. He said that when he met with the tenants at the outset of the tenancy, he explained to them that they *could* use the fireplace, but they would be responsible for any costs related to its use.

Submissions were presented by counsel for the landlord that the tenants' application for a monetary award for loss of a storage area should be dismissed because he alleged that the tenants had offered varied and inconsistent explanations as to why they were seeking compensation. In their application for a monetary award and evidentiary package served on the landlord and provided to the Residential Tenancy Branch, the tenants argued that they could not use the storage area due to asbestos concerns, and

because of the absence of a vapor barrier. During the hearing, the tenants testified that they could not use the storage area because of concerns related to the presence of rodents. The landlord explained to the hearing and in an affidavit submitted as part of his evidentiary package that the storage area was rented “as is” to the tenants. Furthermore, he stated that insulation was placed in the storage area in 2014 and that no asbestos was present.

The final portion of the tenants’ application for a monetary award concerns loss of one day’s wages related to a missed meeting with the landlord. The tenants’ argued that a November 27, 2017 meeting had been arranged with the landlord to address some issues with the kitchen. The tenant explained that he was forced to take a day off work, but that the landlord had failed to attend the meeting. The landlord acknowledged that a meeting had been missed, but attributed this to miscommunication between the parties.

During the hearing counsel for the landlord did not object to having an Order for repairs to be made to the rental unit should they be found to be “necessary.” The tenants explained that some steps had been taken by the landlord to address the rodent infestation but that these efforts had been limited to the landlord placing rat and mouse poison on the property. The tenants said they were very concerned that their cat would potentially eat a deceased rodent that had consumed this poison, and then it would become ill.

### Analysis

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 a monetary award.

The tenants argued that they had been informed by the landlord that their rental unit included storage and the use of the fireplace. They explained that because of various issues surrounding rodent infestation that their storage space was unusable and that they had incurred numerous costs associated with operating and maintaining a gas fire place that was not in working order when they took possession of the rental unit.

During the hearing, the landlord argued that storage space continued to be available in the garage and under the house, and highlighted differing reason offered by the tenants for their hesitation in using the storage area. Additionally, the landlord stated that storage continued to be available to the tenants in the garage area. I find that insufficient evidence was presented by the tenants showing that storage was not made available to them. Oral testimony from both the tenants and the landlord explained that storage was available under the house and in the garage; however, differing and inconsistent explanations were offered by the tenants as to why they did not use the storage under the house. I do not find that the landlord failed to provide storage to the tenants as per the terms of the tenancy agreement and therefore dismiss this portion of their application for dispute.

The second portion of the tenants' application for a monetary award sought an amount of \$950.00 for loss of a gas fireplace, and \$169.68 for lost wages. A review of the tenancy agreement signed between the parties shows that rent included heat. It was not specified which type of heat source was to be used by the tenants. I do not find any evidence was presented to the hearing that the landlord agreed to provide the gas fireplace to the tenants as a material condition of their tenancy agreement. I find that the landlord rented the home to the tenants with the use of a gas fireplace as an optional amenity if they chose to pursue it. Little evidence was presented at the hearing that the landlord advertised to rent the home with the fireplace as a working amenity. I do not find that the landlord has failed in his duty to provide heat to the tenants and I accept the landlord's testimony that the use of a fireplace was an option open to the tenants, should they wish to pursue it. For these reasons, I dismiss this portion of the tenants' monetary application.

The final aspect of the tenants' application concerns lost wages for a missed meeting with the landlord. The tenant argued he was due this amount because he missed an entire day of work for a meeting that related to the tenancy, and which the landlord failed to show. The landlord argued that this meeting was missed as a result of miscommunication. I find little evidence was presented to the hearing that the landlord took any direct action to actively avoid or mislead the tenant. I find it very plausible that a simple miscommunication resulted in the missed meeting. For these reasons, I dismiss this portion of the tenants' application.

The tenant has also applied for an Order directing the landlord to make repairs to the rental unit. Specifically, the tenant sought a professional pest control person to attend the property and address the rodent situation on the property. At the hearing, counsel

for the tenant offered little objection to this request, if it was deemed necessary. I find that the tenant raised valid concerns regarding the use of poison as a means of pest control because of the presence of a cat on the property. I direct the landlord to hire a professional pest control company to attend the property and respond to the presence of rodents in the home. The landlord is ordered to contact a professional pest control company and arrange for visitation to the property within 30 days of receipt of this decision. Failure to do so may result in a future award of damages to the tenants.

As the tenants were partially successful in their application, they may recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants are granted a Monetary Order of \$750.00 which includes a return of the filing fee. The tenants are provided with a Monetary Order in the above terms. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is ordered to contact a professional pest control company and arrange for visitation to the property within 30 days of receipt of this decision.

The landlord is ordered to comply with section 29 of the *Act* and to provide the tenants with at least 24 hours' notice of his intention to enter the property.

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: January 15, 2018

---

Residential Tenancy Branch