



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

RR

### **Introduction**

This hearing was convened in response to an application filed by the tenant January 29, 2018 seeking an order under the *Residential Tenancy Act* (the Act) as follows:

- A reduction of rent for repairs, services or facilities agreed upon but not provided – Section 65

Both parties participated in the hearing and provided testimony. The landlord testified they received the tenant's application and all of the tenant's evidence comprised of a series of photographs. The hearing proceeded on merits of the tenant's claim.

The parties were provided opportunity to present relevant evidence and testimony in respect to the claim and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were informed that only *relevant evidence* would be considered toward a final and binding Decision.

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

Is the tenant entitled to the monetary amount claimed?

Is the tenant entitled to a reduction of rent?

*The burden of proof rests on the claimant tenant.*

### **Background and Evidence**

According to the tenant this tenancy started over 10 years ago. The current landlord assumed responsibilities' and obligations approximately one year ago. The parties agree rent of \$493.00 per month is payable each month.

The tenant acknowledged they did not personally attend to their application in this matter, in which they are claiming \$2400.00 and states as follows,

*My unit has been 60% functional for years, and I am requesting a rebate of 40% of my rent. This does not take into account the affect on my health and well-being. I couldn't use my kitchen sink for 9 days, and I am in pain from emptying buckets from the toilet not working. Landlord either doesn't show up to do repairs, or shows up with no notice. Exterior windows are filthy, and snow is not removed from walkways and stairs – as written*

The tenant was apprised that regardless of who advanced the application I must look to them to present and support their claim. The tenant's application provided photographs which are in support of the following statement.

*These pictures show my non-functional toilet (didn't work for 7 days), the filth that obscured my windows for 5 months, the weather stripping that does not stay on my door, and the temperature inside my unit (12 degrees INSIDE)- as written*

1). The tenant testified that during the current season they have not experienced sufficient heat. The landlord testified the building's heating system operates at 80% and both parties acknowledged their regional seasonal weather has been and can be very cold to -20 degrees. Both parties acknowledged the landlord has made efforts to abate the cold by installing new weather stripping at the balcony door. The landlord testified that due to the cold the weather stripping has not properly adhered and therefore has detached with a resulting draft. None the less, they have before, and again will attend to the balcony door seal. The tenant testified that as a smoker they will also open a window for ventilation. As a result of the above the tenant has been augmenting the building's heating system with use of a space heater for which the landlord has been providing the electrical utility. In contrast to the tenant's claim the landlord's testimony was that when they have attended the tenant's unit it has felt warm. The tenant submitted a photo image of a wall thermometer claimed to indicate the temperature in the rental unit as 12 degrees, primarily in the washroom.

2). The tenant testified about some recent plumbing issues. In particular over the recent months the tenant was not able to use their kitchen sink due to a faulty faucet for 9 days. As well the tenant was unable to easily use their toilet without having to manually attend to a leak resulting in having to empty a bucket. The parties agreed this issue went unresolved for 7 days.

3). The tenant claims that they had to endure a dirty window for 5 months which reportedly had an egg splattered onto it. The tenant claims they had requested the landlord clean the window and for various reasons the landlord did not for 5 months.

4). The tenant testified that over the season there has been insufficient snow removal of walkways and stairs of the residential property.

The tenant testified that issues with the rental unit have arisen over the years of tenancy and arise periodically and despite being attended to by the landlord issues seem not to be well resolved once and for all.

The landlord testified they have visited the tenant over 30 times in recent months to attend to the tenant's many requests for repairs or service. They testified being sensitive to the tenant's needs and that their concerns have never been ignored and attended to within reasonable time, but that the tenant's calls "are constant". The landlord testified that in respect to snow removal they have received a lot of snow this season and they endeavour to clear snow as soon as possible and acknowledged it as a priority. The landlord testified they will continue absorbing the electrical cost to augment the building's heating system until no longer required. As well the sink received a new faucet unit and the toilet was repaired and the entire unit was checked and re-inspected by a professional plumber. The landlord testified the faulty balcony door seal will be upgraded.

### **Analysis**

On preponderance of the available relevant evidence and on the balance of probabilities, I find as follows.

**Section 32** of the Act states a landlord must maintain residential property in a state of decoration and *repair required by law and suitable for occupation*. I find the tenant's expectation of an issues-free rental unit may or may not be reasonable vis a vis the particulars of the residential property. I have not been presented with evidence that the landlord has generally ignored the tenant's issues or requests of problems. However, I accept the evidence of both parties the tenant suffered a loss of use of their sink and toilet facilities for periods of 7 and 9 days and as well has suffered due to a poor door seal and resulting heat loss requiring augmentation of heat during a cold season. I also accept the tenant's request to clean the exterior of a window went unheeded for months, and the landlord has on balance of probabilities not always attended to snow removal as timely as required.

**Section 7** of the Act provides as follows in respect to the tenant's claims made herein:

**7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. *Proof the damage or loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss, or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss, or damage.*

The tenant bears the burden of establishing their claim by proving the existence of a loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the tenant must then provide evidence that can reasonably verify the monetary value or amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation and to mitigate the loss claimed.

I find the tenant did not present sufficient evidence to support in which ways the landlord's conduct, in violation of the Act or the agreement, has affected their health and well being. Other than the specific example presented in this matter I find the tenant has not provided sufficient evidence of the historical nature of their claimed issues.

None the less, on balance of probabilities I accept the tenant has suffered a loss of use in respect to the sink and toilet facilities, as well has been inconvenienced by a drafty or faulty door seal likely resulting in heat loss; and, unusable outdoor walkways during a cold season.

As a result, I find the tenant entitled to compensation for loss of use and a loss of enjoyment which I set as follows,

- \$5.00 *per day* for each of the 2 plumbing related matters of the sink and toilet (\$5.00 x 16 days = \$80.00),
- \$10.00 *per month* for each of 5 months for the unclean window (\$50.00),
- \$50.00 per month for each of the 5 months of November 2017 to March 2018 for the seasonal cold issues of a faulty door seal, and lack of snow removal (\$250.00).

The tenant's award is the sum of fractional entitlements in the total of **\$380.00**.

Having determined the tenant's entitlement to compensation I find that an ongoing rent reduction is not appropriate.

**I grant** the tenant a **Monetary Order** under Section 67 of the Act for the amount of **\$380.00**. If necessary, this Order may be enforced. The tenant can choose to collect on the Monetary Order through the Small Claims Court, or through reducing this amount from a future rent payment.

### **Conclusion**

The tenant's application as relevant has been granted, without leave to reapply.

**This Decision is final and binding.**

*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 29, 2018

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Residential Tenancy Branch