



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

RP, RR, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order that the landlords make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 30 minutes. Both named tenants attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant NM (the "tenant") primarily spoke for both co-tenants.

The tenant testified that she served the landlord with the application for dispute resolution dated April 30, 2018 and evidence package by registered mail sent on May 2, 2018. The tenant provided a Canada Post tracking number as evidence of service. Based on the undisputed evidence, and pursuant to sections 88, 89 and 90 of the *Act* I find that the landlord is deemed served with the tenant's application for dispute resolution on May 7, 2018, five days after mailing.

At the outset of the hearing the tenant testified that the amount of their monetary claim has changed and they are now seeking the sum of \$1,945.72 for additional rent reduction. As the amount of the monetary claim for rent reduction increasing over time is reasonably foreseeable, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the tenants' Application to increase their monetary claim from \$1,604.72 to \$1,945.72.

### Issue(s) to be Decided

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

Are the tenants entitled to a monetary order for compensation for the reduced value of the tenancy arising from the landlord's failure to make repairs?

Are the tenants entitled to recover the filing fees for this application from the landlord?

### Background and Evidence

The tenants gave undisputed evidence regarding the following facts. This tenancy began in September, 2017. The monthly rent is \$1,700.00 payable on the first of each month. The tenancy agreement provides that the rent includes a stove and oven, and free laundry. Three pages of the tenancy agreement was submitted into written evidence.

The tenant testified that the oven in the rental unit was not working from September, 2017 to February, 2018. The washing machine has been malfunctioning since November, 2017. The washing machine is usable but the tenant must manually fill the machine with water from a faucet. The tenant said that the garburator in the kitchen was broken and the landlord's attempts at repairs have only worsened the situation, causing a leak. The tenant said that they hired a plumber to attend to the leak as the landlord's attempts were inadequate. The tenant testified that a plumber has also reviewed the single toilet in the rental unit and advised them that it is cracked and needs to be replaced.

The tenants submitted into written evidence some photographs of the rental unit as well as copies of the correspondence with the landlord. The tenants submitted an invoice from a plumber for an amount of \$245.72 on April 12, 2018 for fixing a leaking pipe. The description of the work performed includes a recommendation by the plumber that: "Toilet need to be replaced ASAP". The tenant explained that the landlord attempted to fix the garburator in the rental unit but caused a leak instead. The landlord initially advised the tenant to call a plumber but subsequently said that they would make another attempt to fix and the plumber was cancelled. The tenant said that when the landlord failed to make adequate repairs the following day they contacted the plumber to come deal with the issue.

The tenant provided the invoice from the plumber to the landlord claiming reimbursement for their out of pocket payment. The tenant testified that the landlord did not agree to pay the tenant for the cost of repairs.

### Analysis

Section 33 of the *Act* defines an emergency repair as an urgent repair necessary for the health or safety of anyone or for the preservation of the residential property and made for the purposes of repairing plumbing fixtures. I find that a kitchen water leak meets the definition of an emergency repair as set out in the *Act*.

The section further provides in subsection (3) that a tenant may have emergency repairs made only when the following conditions are met:

- a) Emergency repairs are needed;
- b) The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- c) Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

I accept the tenants' evidence through their undisputed testimony and the written records of correspondence that they contacted the landlord's spouse, who was designated as the contact for repairs, on multiple occasions when the kitchen leak was occurring. I accept the evidence that the landlord failed to perform adequate repairs in a reasonable period of time and therefore the tenant contacted a plumber to have those repairs made. The tenant testified that they waited a day and I find that under the circumstance, when a kitchen pipe is the cause of the leak, that is a reasonable period of time to wait before taking action.

Section 33(5) provides that the landlord must reimburse a tenant for amounts paid for emergency repair if the tenant:

- (a) Claims reimbursement for those amounts from the landlord, and
- (b) Gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I accept the tenants' evidence that they provided the written account to the landlord by a letter which included the invoice received from the plumber. I find that the tenants have acted in accordance with the Act in having emergency repairs made and in claiming reimbursement from the landlord. Accordingly, I find that the tenants are entitled to a monetary award in the amount of \$245.72 for the cost of emergency repairs.

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 a tenant.

*Residential Tenancy Act Regulations* Schedule 8, in relevant part, states:

8 (1) Landlord's obligations:

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

The tenants seek compensation for loss in the value of the tenancy due to the deficiencies in the tenancy. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

The tenants suggest that the loss of the value of the tenancy due to the landlord's failure to make repairs to be \$1,700.00, approximately 10% of the monthly rent. I find that there is sufficient evidence in support of the tenants' claim.

I accept the evidence of the tenants that there are issues with the rental unit that require repair. I accept the evidence that the tenants have made the landlords aware of the issues and have requested repairs over the course of the tenancy. The tenant gave evidence that the oven in the rental unit was not working for close to 6 months until replaced in February, 2018. The tenant testified that they were forced to curtail or limit their cooking because of the broken stove. The tenant testified that they are forced to physically fill the washing machine with water from a sink in order to have clean clothes. The tenant says that the toilet in the rental unit is usable but they have been advised by the plumber that it is in imminent danger and needs to be replaced. As a result, the tenants testified that they minimize their use of the bathroom in the rental unit.

I find that the inability to use the oven in the kitchen and the bathroom toilet without limitations to be a significant loss. The tenant gave evidence about how they have had to alter their lifestyle in order to continue residing in the rental unit. I find that the tenant being unable to use the washroom for fear of imminent flooding or plumbing issues to be a significant impact on their ability to enjoy the rental unit. The tenant described the additional time and physical effort it requires to do a single load of laundry. I find that the deficiencies in the rental unit, which have been informed to the landlord on multiple occasions and have been left unattended, have had a significant detrimental effect on the tenants' ability to enjoy the unit.

I find it appropriate to issue a one-time monetary award in the amount of \$1,700.00, the equivalent of 10% of the monthly rent for a period of 10 months. This award acknowledges that some issues were resolved during the tenancy while other issues remained.

I accept the tenants' evidence that the kitchen leak and oven have been adequately repaired as at the date of the hearing. I accept the undisputed evidence that the landlord failed to complete the full repairs requested by the tenant. I accept the evidence that the washing machine remains broken and that the toilet remains cracked and in need of replacement. I find that, based on the nature and scope of the deficiencies, the repairs requested by the tenants are not simply a matter of preference but necessary to ensure the rental suite complies with health, safety and housing standards. Based on the tenant's testimony and evidence I find it appropriate to issue the following order for repairs.

I Order the landlord to complete the following repairs within 4 weeks following the date of this decision.

- Repair or replace the washing machine in the rental unit
- Repair or replace the toilet in the rental unit

The landlord is ordered to perform the above repairs as reasonable in the discretion of a maintenance professional. While the landlord is not barred from attempting to perform the repairs themselves, all repairs must be made to a satisfactory level as assessed by a professional.

As I find that the continuing deficiencies in the rental unit reduce the value of the tenancy I further order that the tenants may reduce their rent for August, 2018 by \$170.00 and until such time as the above noted repairs are completed. I order that the tenants' rent will return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

As the tenants were successful in their application, the tenants are entitled to recovery of the \$100.00 filing fee for this application.

### Conclusion

I issue a one-time monetary award in the tenants' favour in the amount of \$2,045.72 which includes compensation for emergency repairs, past reduction of rent and the filing fees for this tenancy. As this tenancy is continuing the tenants may reduce the next monthly rent amount owed to the landlord by that amount. In the event that is not possible I issue a monetary order in that amount.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these

Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I order that the landlord completes the following repairs to a level satisfactory to a professional inspection:

- Repair or replace the washing machine in the rental unit
- Repair or replace the toilet in the rental unit

I order that the monthly rent for this tenancy be reduced by \$170.00 from August, 2018 and for each subsequent month until the above noted repairs are 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 22, 2018

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Residential Tenancy Branch