



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      **CNR DRI FFT OLC RP RR**

### **Introduction**

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

- an order to the landlord to make the following repairs to the rental unit pursuant to section 32;
  - replace carpet in compliance with a prior order of the Residential Tenancy Branch
  - install smoke and carbon monoxide detectors;
  - repair windows;
  - repair refrigerator;
  - repair leaking faucet;
  - repair bathroom floor; and
  - remediate mould in bedroom closet;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Tenant CE attended the hearing and confirmed that she was authorized to represent both tenants (hereinafter, the tenants). Two children of the landlord attended the hearing as agents for the landlord (hereinafter, the landlord). All were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlord was served the notice of dispute resolution package via registered mail on January 18, 2019. The tenants provided a Canada Post tracking number (reproduced on the cover of this decision). The landlord confirmed receipt of the notice of dispute resolution package, but did not specify a date. I find that the landlord was deemed served with this package on January 23, 2019, five days after the tenants mailed it, in accordance with sections 89 and 90 of the Act.

The tenants testified they personally served the landlord with their evidence in support of this application on February 14, 2019. The landlord confirmed receipt of these documents. I find that the landlord was served with the tenants' evidence on February 14, 2019, in accordance with section 88 of the Act.

The landlord testified she served the tenants with her evidence in support of this application on February 14, 2019 by dropping it off in the tenant's mailbox. The tenants testified they received them on February 18, 2019. I find that the tenants were served with the landlord's evidence on February 18, 2019, in accordance with section 88 of the Act.

#### Preliminary Matter – Withdrawal of the Notice

At the outset of the hearing the landlord advised me that they have withdrawn the Notice. The landlord had communicated this to the tenant prior to the hearing. Accordingly, I order that the Notice is cancelled.

#### Preliminary Matter - Partial Settlement

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 attending parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both attending parties agreed to the following final and binding settlement on the issues of all repairs currently under dispute, except that of the bathroom floor:

- 1) The landlord will arrange for a representative to attend the rental unit and install two smoke/carbon monoxide detectors by March 1, 2019.
- 2) The landlord will arrange for a representative to attend the rental unit and inspect the faucet and repair it as necessary by March 1, 2019.

- 3) The landlord will arrange for a representative to attend the rental unit and remediate the mold in the bedroom closet on February 28 or March 1, 2019. The tenants agree that, as part of this remediation a fan may be used to dry the damaged area for between 24 and 36 hours.
- 4) The landlord will arrange for a licensed professional to attend the rental unit and determine what (if any) of the windows need to be sealed by March 11, 2019.
- 5) The tenants agree to defrost the refrigerator in an attempt to resolve the issue. The landlord agrees to supply the tenants with instructions, in writing, on how to do this. The landlord agrees that if the defrosting does not solve the issue, then she will further investigate the problem.
- 6) The landlord agrees to arrange for the carpet to be replaced (as ordered by an arbitrator of this branch on May 7, 2018) by the end of March, 2019. The landlord agrees to provide the tenants in writing with, at minimum, one weekend's notice of when the carpet will be replaced, to allow for the tenants to move furniture as necessary.
- 7) The tenants agree not to unreasonably withhold access to the rental unit of any to the landlord's representatives who are attending the rental unit to comply with the agreement as set out above.

These particulars comprise the full and final settlement of all aspects of the tenants' claim for the landlord to make the repairs (other than those to the bathroom floor).

#### Preliminary Matter – Future Hearings

At the conclusion of the hearing, I advised the parties that, in light of their repeated appearances before arbitrators of this Branch on related issues, I would order myself seizing of matters arising between the parties relating to the tenancy. Upon reflection, this is not an order I am empowered to make under the Act, and I therefore rescind it.

Any future dispute between the parties will be adjudicated by the arbitrator assigned to hear it in the usual course of operations of this Branch.

#### Issue(s) to be Decided

Are the tenants entitled to:

- an order that the landlord repair bathroom floor;
- a determination regarding their dispute of an additional rent increase by the landlord;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement starting August 1, 2017. Monthly rent was \$2,500.00. The tenants paid a \$1,250.00 security deposit and a \$400.00 pet damage deposit. The landlords still retain these deposits.

### **Rent Increase**

The landlord served a Notice of Rent Increase on the tenants by personal service. The landlord testified that it was served on September 27, 2018. It purported to raise the monthly rent by \$100.00 starting January 1, 2019. The Notice of Rent Increase is not signed or dated (of copy is uploaded into evidence). On January 21, 2019 the landlord wrote a letter to the tenants stating that this amount was in excess of what was permitted by the Act, and that they are reducing the monthly increase to \$62.50.

The tenants deny that the Notice of Rent Increase is valid, as it was unsigned and undated, and, in the alternative, argue that it was not served until October 1, 2018, and therefor monthly rent is not to increase until February 1, 2019.

### **Prior Proceeding**

On May 7, 2018 the parties were involved in a hearing before the Residential Tenancy Branch. The arbitrator adjudicating this hearing and ordered that the landlord to "replace the living room and dining room carpets[...] within one month on service of [this] order." The tenants testified the landlord served the order on the landlord on May 17, 2018.

The tenants testified that the landlord did not replace the carpet by June 17, 2018 (30 days after service of the order). Indeed, she testified that the first time she heard from the landlord regarding replacement of the carpet was on October 5, 2018. On this date, the landlord wrote the tenants stating that they had arranged for workers to replace the carpet on the October 10, 2018. The tenants replied that this date would not work, as

the landlord failed to give sufficient notice to allow them to move the furniture (including a china cabinet and 72" TV) from the room.

The landlord then wrote the tenants again on October 12, 2018 (the tenants testified they didn't receive this letter until October 15, 2018), and stated they had arranged for the carpet to be replaced on October 17, 2018. The tenants again replied that this was insufficient notice.

The landlords wrote the tenants a third time, on October 21, 2018, advising that they had arranged for the carpet to be replaced on October 24, 2018. The tenants wrote the landlord on October 23, 2018 stating that again, this was not enough notice for them to prepare the rental unit for these repairs.

The parties agree that the landlord did not consult with the tenants in selecting dates to book the movers.

In the letter of October 23, 2018, the tenants wrote that they would advise the landlord of a date that worked for them for the carpet to be replaced. To date, this has not been done, and the carpet remains un-replaced.

The landlord offered no explanation as to why she did not attempt to replace the carpet by June 17, 2018, as previously ordered on May 7, 2018.

#### Reduction of Rent

The tenants claim for a reduction of monthly rent in the amount of \$100.00 from August 2017 to October 2018 (\$1,400.00) as compensation for having the damaged carpet, and for the landlord making no efforts to replace it.

Additionally, the tenants claim a monthly rent reduction of \$75.00 starting December 2018 and continuing until such time as window maintenance and mold remediation are complete. The tenants testified they believe their utility bills are higher as a result of the repairs to the windows not being done. They entered no documentary evidence in support of this assertion.

The landlord argues that the rent reduction as sought by the tenants is disproportionate to any loss suffered by the tenants as the result of their

#### Landlord to Comply with the Act

The tenants testified that they had written the landlord multiple times regarding repairs to the rental unit. Copies of these letters were entered into evidence. They testified that the landlord never replied. The landlord testified that she had not received these letters. The tenants seek an order that the landlord respond to future letters and complete the necessary maintenance on the rental unit, as required by section 32 of the Act.

### Bathroom Floor

The parties agree that the vinyl flooring in bathroom needs to be replaced. The tenants testified that, at the direction of the landlord's plumber, they removed a part of the vinyl flooring. The tenants agree that they are responsible for the replacement cost of the flooring.

The landlord denies that her plumber instructed the tenants to remove the flooring, but agrees that the cost of the replacement of the flooring should be borne by the tenants.

The parties disagree on who is to complete the repairs. The tenants want to select their own contractor, and pay for it themselves. It is the landlord's position that, if repairs are to be done, that they should be able to select the contractor, and that the tenants are liable to pay the contractor directly. The landlord is willing to provide the tenants with three quotes from contractors to repair the bathroom floor, and permit the tenant to choose from among those a contractor to conduct the repairs.

### Analysis

#### Increase in Rent

I have reviewed the Notice of Rent Increase and find that it is neither signed nor dated. Section 42(3) of the Act states:

#### **Timing and notice of rent increases**

(3) A notice of a rent increase must be in the approved form.

While the correct form of Notice of Rent Increase was used by the landlord (Form RTB-7), the form itself was not properly completed. Form RTB-7 includes a field for the landlord's signature and for the date of issuance. As neither of these fields were completed by the landlord, the Notice of Rent Increase form was not completed, and therefore is not in the approved form.

Accordingly, I order that the Notice of Rent Increase served by the landlord is ineffective and of no effect. The tenants' monthly rent shall remain \$2,500.00.

### Rent Reduction

I find that the landlord was obligated to replace the carpet in the living room and dining room by June 17, 2018. I find that they made no effort to have such a replacement done until almost four months later, on October 10, 2018. No evidence was provided by the landlord as to why this was the case.

I find that by so doing, the landlord breached the May 7, 2018 Order. Accordingly, I find a four month rent reduction in the amount of \$100.00 per month for each month past the date by which the landlord was ordered to make the repairs (total of \$400.00) to be reasonable. As the tenants refused access to the rental unit on October 10, 2018, and on subsequent dates, I do not find it appropriate to award any rent reduction for the time following October 10, 2018.

I do not find it reasonable to award a rent reduction for failure to replace the carpets for a period of time prior to when the landlord was order to replace the carpet.

I find that the tenants have not demonstrated any basis to show that they suffered loss or damage as the result of a failure of the landlord to make repairs to the windows or remediate the mold. Additionally, the parties have come to an agreement by which these issues will be addressed, therefore I do not find it reasonable to order a rent reduction for future months on this basis.

### Bathroom Floor

Per the tenants' testimony, I find that they caused the damage to the bathroom flooring, and that this damage necessitates the replacement of the vinyl flooring material

Section 32 of the Act states:

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The Act is silent as to whether or not a landlord has authority to direct how these repairs are to be done.

I note that, per section 37(2) of the Act, the tenants must leave the rental unit “undamaged except for reasonable wear and tear.” If the tenant fails to do this, the landlord may apply for compensation against the damage deposit (as per section 38(1) of the Act).

If the tenants select their own contractor to make the repairs to the bathroom floor, and these repairs are of a substandard quality, the landlord would be entitled at the end of the tenancy to apply against the security deposit to re-repair the bathroom floor. Any scenario which allows for the potential for the bathroom floor to be replaced twice should be avoided, if possible.

The tenants have failed to articulate a basis for opposing the use of a contractor selected by the landlord to conduct the repairs, other than that they would prefer to use their own contractor. I have no evidence before me as to the quality or pricing of this contractor or any proposed contractor of the landlord.

Accordingly, pursuant to section 62(3) of the Act, I order that, within 60 days of being served with this order by the tenants, the landlord obtain three quotes for the replacement of the bathroom flooring with materials and a design comparable to those of the current floor. The landlord will provide these quotes to the tenants, and the tenants will select one of them to make the repairs. The tenants will be responsible for paying this contractor directly, and must do everything reasonably within their power to allow the contractor to repair the bathroom floor, including pay any deposit in advance of the repairs, as required by the contractor.

#### Landlord to Comply with Act

As the parties have come to an agreement as to the bulk of the repairs needed to be done, and as I have made an order regarding repairs of the bathroom flooring, I decline to make any order requiring the landlord to comply with the Act or to reply to any correspondence previously sent by the tenants.

As the tenants were partially successful in their application, and as the landlord withdrew the Notice (which precipitated the filing of this application) I order that the landlord reimburse the tenants their filing fee in the amount of \$100.00.

#### Conclusion



I order that the Notice is cancelled.

I order that the Notice of Rent Increase is invalid and of no effect.

Pursuant to sections 67 and 72, I order that the landlord pay the tenants \$500.00 representing the reimbursement of their filing fee and a retroactive rent reduction for the period of time between June 17, 2018 and October 10, 2018. Should the landlord fail to comply with this order, this order may be filed and enforced as an order of the Small Claims Division of the Provincial Court of British Columbia.

Pursuant to section 62, I order that, within 60 days of being served with this order by the tenants, the landlord obtain three quotes for the replacement of the bathroom flooring. The landlord will provide these quotes to the tenants, and the tenants will select one of them to make the repairs. The tenants will be responsible for paying this contractor directly, and must do everything reasonably within their power to allow the contractor to repair the bathroom floor, including pay any deposit in advance of the repairs, as required by the contractor.

I order, by consent of the parties, that:

- 1) The landlord will arrange for a representative to attend the rental unit and install two smoke/carbon monoxide detectors by March 1, 2019.
- 2) The landlord will arrange for a representative to attend the rental unit and inspect the faucet and repair it as necessary by March 1, 2019.
- 3) The landlord will arrange for a representative to attend the rental unit and remediate the mold in the bedroom closet on February 28 or March 1, 2019. The tenants agree that, as part of this remediation a fan may be used to dry the damaged area for between 24 and 36 hours.
- 4) The landlord will arrange for a properly licensed professional to attend the rental unit and determine what (if any) of the windows need to be sealed by March 11, 2019.
- 5) The tenants agree to defrost the refrigerator in an attempt to resolve the issue. The landlord agrees to supply the tenants with instructions, in writing, on how to do this. The landlord agrees that if the defrosting does not solve the issue, then she will further investigate the problem.
- 6) The landlord agrees to arrange for the carpet to be replaced (as ordered) by the end of March, 2019. The landlord agrees to provide the tenants in writing with, at minimum, one weekend's notice of when the carpet will be replaced, to allow for the tenants to move furniture as necessary.

- 7) The tenants agree not to unreasonably withhold access to the rental unit of any to the landlord's representatives who are attending the rental unit to comply with the agreement as set out above.

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 7, 2019

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Residential Tenancy Branch