



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          RP, RR, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order for repairs, for an order to reduce the rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of their filing fee.

The Tenants and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application and documentary evidence.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

The Tenants attended the teleconference, but were represented by Tenant, K.R., throughout. I have referred to their evidence as having come from the "Tenants" for simplicity, although I mean their representative in this regard.

### Issue(s) to be Decided

- Are the Tenants entitled to reduced rent for repairs, services or facilities agreed upon, but not provided?
- Are the Tenants entitled to an order requiring the Landlord to make repairs to the rental unit?
- Are the Tenants entitled to recovery of the cost of the filing fee?

## Background and Evidence

The Parties agreed that the fixed tenancy runs from September 1, 2018 to August 31, 2019, with a monthly rent of \$3,480.00. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,740.00 and no pet damage deposit.

### **1. CLEANING, LOCKS and SMOKE ALARMS**

#### Tenants' Evidence

In the hearing, the Tenants said that when they moved in on September 1, 2018, the cleaning was not up to their standards, as they said they found it to be unsanitary. The Tenants said that they and some of their family members had to do a lot of cleaning before they moved in. They provided photos of their move-in date, which indicated the presence of what they called "junk and garbage from previous tenants".

They said there was a lot of "stuff" left behind by the previous tenants, including an old mattress in the back yard. The Tenants said that the kitchen and bathroom required the most cleaning. They said when they moved the refrigerator they found and had to clean up rat or mouse feces.

The Tenants said that a significant part of their first day in the rental unit was spent cleaning the house and installing locks and smoke alarms. They said there were no interior locks on doors and they wanted to change the locks on the front and back doors of the house, as well as the door to the garage. The Tenants acknowledged that the Landlord bought locks and smoke alarms for them right away, which the Tenants installed.

#### Landlord's Evidence

In the hearing, the Landlord confirmed that the Tenants were ready to move in on the afternoon of September 1, 2018, and she said that the previous tenants had moved out that morning. The Landlord said that the new Tenants:

...came in the afternoon between 1 to 2 o'clock, so we hadn't finished cleaning. Me and my husband were cleaning. We cleaned all the garbage and they complained the kitchen was not clean, the rooms were not clean, so I made an agreement with the Tenants to hire professional cleaner.

The Landlord said that on September 1, 2018, she booked a cleaner, but because it was the long weekend, the soonest she could get someone to come was on September 4. The Tenants agreed that a professional cleaner attended the rental unit, as arranged and paid for by the Landlord.

The Landlord submitted receipts for the locks and smoke alarms she bought from a hardware chain. She also said she purchased new toilets in the first week, as well as fixing a light switch and kitchen curtains that the Tenants had asked about. The Tenants agreed that the Landlord did these activities.

The Landlord said she did not receive any complaints about the job done by the cleaner she had hired. She also acknowledged that when they first moved in, the Tenants and their parents helped doing cleaning, because the cleaner could only attend after the long weekend. The Landlord said that the Tenants' parents said they are very handy and they installed the locks and the fire alarms.

## **2. MOULD**

### **Tenants' Evidence**

Apart from the general cleaning needs of the rental unit, the Tenants emphasized the issue of mould in the window seals and the second bathroom. The Tenants said they first noticed it upon moving in.

The Tenants submitted photos labelled "mould bedroom one and two" and "mould living room windows". The Tenants said that there is mould present on all the window seals throughout the house, with which the Landlord agreed.

The Tenants said they had a meeting with the Landlord about this and that she told them it was a known issue. The Tenants said that the Landlord told them that a temporary solution would be to paint over the mould on the window seals.

The Tenants said:

We understand we have responsibility to maintain the cleanliness, such as preventing mould in the house, but when we moved in the mould was so ingrained in the window seals that there was no way we could keep it clean. A professional cleaner came in for 1 – 2 hours each day. She did some work on the mould on the windows, but it's clear that the mould was there to stay, unless the window seals were replaced. The Mould in the living room window was never dealt with. I asked the cleaner to take a look at that. The mould issue is a health issue. We would like to get this repaired as soon as possible. We would like a professional opinion on how to deal with it. Whatever is involved we would like to get that dealt with.

The Tenants also said: "Again, we do know responsibility lies with us to maintain the window seals, and this was first noticed upon moving in. It was not dealt with satisfactorily by the time of our meeting [with the Landlord] in January. We can see airing out the rooms and cleaning

ourselves, but the mould is so significant, there's no way we can maintain it without having a professional fix."

### Landlord's Evidence

The Landlord submitted an email that she wrote to the Tenants, further to their discussion at the January 5, 2019 meeting. In this email, the Landlord said:

I received your email about requesting rent reduction, here are my opinions.

#### 1. Cleaning, replacing locks, and fire alarms

When you first moved into the house on September 1<sup>st</sup>, 2018, you complained the house was not clean. Then I hired a professional cleaner to do the cleaning. Due to the Labor Day long weekend, I booked the earliest cleaner coming on the first weekday September 4<sup>th</sup>. I acknowledged you did do some cleaning before the cleaner came, but there is no means that I would pay for that. Also, you requested to replace all the locks and fire alarms. I bought them on the same day when you moved in. I asked if you could install them when I passed the locks and alarms to you. You said yes, and your parents showing up on that day proved that you are very handy people. You did not mention I would pay for that. If you talked about the labor for installing locks, I would rather hire professional people to get it done.

#### 2. Mould issue on window seals

When my cleaner cleaned the house, she did clean the window seals in the living room, the kitchen, and all your bedrooms. I understand that during the winter season when using the heater in rooms, the mould on window seals comes back quickly, because of the old style of window frame. To solve this problem completely, the ideal way is to replace all the window frames to the new vinyl style. This will be a huge cost which I cannot afford. To prevent the mould growing, it is your responsibility to clean the window seals every day and also open the windows daily on a certain amount of time to have air circulated and dry out the seals.

### 3. CARPETING

#### Tenants' Evidence

The Tenants said that this is "more minor" when all the issues are considered overall. They said, "but upon moving in, we noticed the carpets were not cleaned to put it simply. There was a noticeable odour on moving in. We know [the Landlord] did have a carpet cleaner on the downstairs floor, but it was not dry when we moved in. And while it appeared they attempted to

clean it, it was not sufficiently cleaned. [The Landlord] did acknowledge that the carpets on the stairs and downstairs should be replaced.”

Landlord's Evidence

The Landlord said: “I agree with [ K.R.] – the stairs’ carpet is very old. We did the machine wash before they moved in, but it still looks very old and it doesn’t look clean. If I have the budget, I would like to replace that, but the renovations need budgeting. I have attached the cost since they moved in. Now I’m really short on money, because I have spent thousands.”

**4. SECOND (Downstairs) BATHROOM**

Tenants' Evidence

The Tenants said that when they moved in, the main issue was the mould in the bathroom. They said there is no fan in that bathroom and only a small window. They said, “As such, we deduced that the state of the shower and bathroom was because of unsuitable ventilation. It was not useable due to health considerations. The cleaner cleaned it, but even after, it still didn’t have suitable ventilation. If we used it, it would return to the state it was in. We discussed this in a meeting. We agreed that it would be best to have a professional come in to come up with a plan to add a fan. We have not had any further discussion on that since then.”

Landlord's Evidence

In the hearing, the Landlord said that the downstairs bathroom has a window, but that it does not open. She said it meets the requirement of a bathroom, because it has a window. The Landlord said this bathroom used to have mould in it, but that the cleaner removed the worst of it. She acknowledged, however, that it is still growing, but that if the window is opened, it would be less moist, which would prevent mould growing.

**5. DISHWASHER and OVEN**

**Dishwasher:**

Tenants' Evidence

The Tenants said they quickly realized that “the dishwasher was not working properly, not cleaning or sanitizing dishes. We imagined that it is a very old model - not widely produced. When we requested that [the Landlord] look into getting it fixed, there was no one to repair it, because of the age and unknown brand of dishwasher. As a result, we have to do a significant amount of pre-washing to use it, and we have to use a significant amount of extra water and use the dishwasher twice sometimes to get the dishes clean. When we moved in we assumed the appliance would be working.”

Landlord's Evidence

"I got a report the from Tenants; they said it isn't functioning properly that the dishes can't be cleaned. I contacted several companies, but due to shortage of the parts, I couldn't find someone to fix it. But in my opinion, it still works, just not meeting the Tenants' satisfaction. I'd like to have a professional technician's opinion. What is the cleaning standard? It's different to different people."

When asked, the Landlord said she had no idea how old the dishwasher is. She said: "I will replace it in the cue of my budget; I'm expecting to spend \$1,500.00 for a new dishwasher and the installation."

**Oven:**

Tenants' Evidence

The Tenants said that the oven does not get up to the proper temperature. They said it is often 100 degrees or more off. "We bought a thermometer and have tested it a number of times. We've submitted evidence of a video labeled "Oven-non-functional MOV". It shows what the temperature is set at and the temperature on the thermometer. [The Landlord] did have a technician who replaced a part and charged her for it. But for whatever reason, [the Landlord] did not check to see if the tech had done a sufficient job. Two to three weeks had passed, [the Landlord] said she had spoken with the tech, but he declined to come back to look at their work, because of the time that had passed since the did it. Currently, we're having the same problem with the oven temperature."

Landlord's Evidence

The Landlord said that she first heard about the problem with the oven in a text from the Tenants on September 18, 2018. She said she booked a company to come as soon as possible – the same day. She said a technician came on September 25, 2018 and that the invoice says that the oven was fixed and tested and reached the desired temperature. The Landlord said she submitted this invoice as evidence of how she handled the problem.

The invoice states:

Service Call non-warranty

Issue: [Brand] oven – not getting to proper temperature

Tech Report: found faulty bake element, replaced and tested to heat to 350 degrees.

The Landlord said that she received a second report from the Tenants about the oven on October 13, 2018, or about three weeks later. She said she contacted the company again, but they did not want to repair it again.

The Landlord said: “So I provided a temporary solution – they can still use the top and use the downstairs oven instead, because it is working. I agreed to replace the oven first, because I have spent \$300 to repair it. I’m expecting it to cost around \$1,000 in my budget. I’m considering repairing the oven and I did email the Tenants and talked about it in the meeting we had.” The Landlord said, “I was thinking of replacing it before the dispute in January, but since they asked for rent reduction, I have to rethink my budget. I need their full rent every month to meet my budget needs.”

## **6. FIFTH BEDROOM**

### **Tenants’ Evidence**

The Tenants said that the rental unit was listed as a five bedroom, two bathroom property, but during the showing they were not able to see the fifth bedroom, as they were told someone was sleeping in this room. As such, they said they did not know what the fifth bedroom looked like. “When we saw it we said it would not be sufficient; we measured the room and it did not meet the square footage requirement of BC building codes. It is 6.8041 meters squared and BC Building Codes say this falls short.” The Tenants did not submit a copy of the Building Code.

The Tenants said an even bigger issue is the proximity of this room to the gas furnace. They said they submitted photographs displaying the inside of the bedroom; “we took the door off to the furnace to show how close it is. If we use this room, we can’t use the furnace, because it directly pours heat into that room, and it is extremely loud – it can be heard throughout the house.” They also said there is no working light in the room and that only one of the electrical outlets is functional. They said the window meets the size requirements of BC Building Codes, “but put simply this room is not suitable to live in.”

### **Landlord’s Evidence**

The Landlord said, “from the Tenants’ [documentary] evidence, I don’t see where they provided the fifth bedroom square footage or their measurements or documents about BC Building Codes. I have submitted three photos of the fifth bedroom. I measured the square footage and it’s 7.312 meters square. The minimum width dimension is 2.166 meters. The Landlord said that it meets the “BC building code 2018”, but she did not specify what the Code says or provide a copy of the Building Code.

The Landlord said she submitted a screenshot of a text between her and a Tenant on September 14, 2018. She said, “he said that is too small to live comfortably and he wants to use another one in the downstairs living room. I checked with the other roommates to see if that was

okay. He built some walls in the downstairs living room and converted it into a bigger bedroom. I submitted photos I called the sixth bedroom. So we have solved the bedroom issue.

### Tenants' Evidence

The Tenants said that the Landlord came to the house the week prior to the hearing to take photos and measurements. They pointed to their photographs of the room, saying that there is a small shelf around two sides of the room. This takes the form of the upper half of the wall being indented a few inches, so that there is a shelf on the top of the lower half of the room. This means the room is slightly larger above the shelf and smaller below the shelf. The Tenants said they measured the room below this shelf and the Landlord measured it above the shelf. "We did it at the floor level to obtain the square footage of the room. This is what causes the discrepancy."

Regarding the temporary sixth bedroom, the Tenants' said: "it was at most a temporary arrangement. [G.H.] took it upon himself, his time and money, to build this bedroom. So we would not call it a sixth bedroom. The walls are temporary and can be taken down at any time; it's a solution for a time, until we could get something figured out.

They said, "we also found out that the temporary bedroom also suffered the same issue as the fifth bedroom – on the other side of room are two closet doors, one of which leads directly to the furnace and heat pours into that room. It's slightly better than the fifth bedroom, because it has a working light and adequate space."

### Landlord's Evidence

"When they built the sixth bedroom, they agreed to do it on their cost and he promised to remove it when he moved out."

The Parties did not do a condition inspection when they moved in, so there is no condition inspection report detailing the condition of the rental unit at the start of the tenancy.

The Tenants applied for a rent reduction. On their Notice of Dispute Resolution Proceeding form they said:

Since move-in day, we have requested many repairs for the property. Landlord has been mostly compliant with small repairs, but several large issues remain, after being postponed. Repairs initially requested on move-in day, Sept. 1, 2018. Oven/dishwasher repairs postponed for over a month. Emailed landlord on Jan. 5 outlining remaining issues suggestion for rent reduction. Response received Jan. 7 denying request (citing operating costs) and further delaying repairs (citing budget issues).



## 7. OTHER

The Landlord submitted the following summary of her expenses incurred on the rental unit between September 1 and December 31, 2018.

Professional cleaning	\$225.00
Curtain	\$92.81
Cut keys	\$20.07
Deadbolt	\$42.47
Switch fixing	\$13.49
Smoke alarm	\$69.92
Locks	\$191.85
Replace two toilets	\$570.03
Oven repair	\$330.15
Rats service	\$78.75
Utility bill	\$303.50
Total	\$1,938.04

### Analysis

After considering the testimony of the Parties and the documentary evidence filed, and on a balance of probabilities, I find the following.

The full text of the *Residential Tenancy Act*, Regulation and Residential Tenancy Policy Guidelines can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)

Section 32 of the *Act* sets out landlords' and tenants' respective obligations to repair and maintain rental units. It states:

**32** (1) 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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Residential Tenancy Act Regulation – Schedule Repairs, provides further instruction to landlords as follows:

### **Repairs**

#### **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.

#### **(2) Tenant's obligations:**

(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.

(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.

A Landlord is responsible for making repairs when repairs are needed to ensure reasonable aesthetics, reasonable functioning and/or lawful compliance with health, safety, and housing standards. Tenants are responsible for maintaining reasonable health, cleanliness, and sanitary standards throughout the rental unit.

Policy Guideline 1 (“PG #1”) clarifies the responsibilities of landlords and tenants regarding maintenance, cleaning, and repairs of residential property, and obligations with respect to services and facilities. PG #1 states:

The landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain ‘reasonable health, cleanliness and sanitary standards’ throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Policy Guideline 40 (“PG #40”) is a general guide for determining the useful life of building elements. The “useful life” is the expected lifetime or the acceptable period of use of an item under normal circumstances. PG #40 states that the useful life of a dishwasher is 10 years and of a stove is 15 years. The useful life of aluminum window framing is 20 years.

In the matters before me, I find that the Landlord has lived up to some of her responsibilities, but not others under the *Act* and Regulation. The Landlord responded to the Tenants’ initial requests within a reasonable timeframe for such things as replacement of locks, smoke alarms, and a professional cleaner. However, the Landlord repeatedly referred to her budgetary restraints as a reason for not maintaining the rental unit to the standards required by law in other respects that I will address below.

## **1. CLEANING, LOCKS and SMOKE ALARMS**

Section 37 of the *Act* requires every tenant to leave a rental unit “reasonably clean” at the end of the tenancy and a landlord may seek the cost to bring the unit up to a state of reasonable cleanliness from the former tenants. The tenant’s legal obligation is “reasonably

clean” and this standard is less than “perfectly clean” or “impeccably clean” or “thoroughly clean” or “move-in ready” under the *Act*.

Based on the Parties’ submissions, I find that the previous tenants neglected their duties under section 37 of the *Act*; however, I also find that the Landlord was conscientious in responding to the Tenants’ requests regarding the cleanliness of the rental unit and the need for locks and smoke alarms. While I find that the Tenants and some of their family members worked at bringing the rental unit up to their standard of cleanliness, the Landlord had a professional cleaner attend as soon as possible, as well. I do not make an award or order in this regard.

## **2. MOULD**

PG #1 states:

### **WINDOWS**

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair.
2. The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

The Tenants said they first noticed mould upon moving in. They said they had an opportunity to review the rental unit prior to signing the tenancy agreement, except for the fifth bedroom, so it is unclear why they did not notice the mould in the windows and second bathroom when they reviewed the unit before moving in. However, section 32 (5) of the *Act* requires a landlord to provide and maintain a residential property in compliance with health, safety and housing standards, whether or not a tenant knew of a breach by the landlord at the time of entering into a tenancy agreement.

The evidence before me is that a professional cleaner attended the rental unit on more than one occasion, which included attempting to clean the mould in the windows and bathroom. The Tenants’ undisputed evidence is that this person did not eliminate the mould.

I find that the Tenants’ evidence is that they understand it is their responsibility to clean the areas with mould on a regular basis to reduce the amount of mould collecting over time. They said that they would like a professional opinion on how to deal with it. I find it is the Landlord’s responsibility to hire a professional to determine if there is anything more that the Landlord can do with this type of window, other than replacing them, which the Landlord may wish to do, depending on the age of these windows.

I, therefore, Order as follows:

1. **Within 14 days of the date of this decision letter, namely by Thursday, April 21, 2019**, the Landlord shall retain the services of a qualified, independent mould expert to investigate and recommend remedial steps to address the mould issues throughout the rental unit. The Landlord shall also instruct the mould expert to provide recommendations to both Parties as to how best to avoid the build-up of mould, once remediated.
2. The Landlord shall provide a copy of the report from the mould expert to the Tenants **within two days of receipt of same**.
3. Should the mould expert make recommendations for remediation of the moisture and mould, the Landlord shall initiate those recommended repairs and remediation **within two weeks of receipt of the report** and complete them within a month of receipt of the report.
4. Should the Landlord fail to retain the services of a mould expert as required in paragraph 1, or fail to rectify any issues in accordance with the mould expert's written recommendations as required by paragraph 3, the Tenants may reduce their rent by **\$500.00 per month** until such time as the Landlord complies.

### **3. CARPETING**

The Landlord stressed that improvements, such as new carpeting are limited by her budgetary considerations. PG#1 states the following about Carpeting:

#### **CARPETS**

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during the tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after the tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of the tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

PG #40 sets out that the useful life of carpets is 10 years. Unfortunately, the Landlord could not say how old the carpets were, aside from saying that the carpeting on the stairs and downstairs is “very old”. The Landlord did not comment on having replaced any of the carpeting throughout the rental unit. I find it reasonable to infer that if one part of the carpeting is “very old” and needs replacing, that it is more likely than not that the rest of the carpeting is more than ten years old, which is the useful life of carpets, according to PG #40. By having the carpeting cleaned, rather than replacing it, the Landlord is extending the life of the carpet and saving money by delaying its replacement. I find that the Tenants request for a reduction in rent is reasonable in this regard. However, without knowing the exact age of the carpeting throughout the rental unit, I reduce the rent by a nominal amount of **\$100.00** per month or 3% of the monthly rent, pursuant to section 65(1)(f).

#### **4. SECOND (Downstairs) BATHROOM**

The evidence before me is that the downstairs bathroom has a window, but that the window will not open. I order to the Landlord to follow the recommendations of the mould expert as set out above in terms of remediating the mould issue in the downstairs bathroom.

#### **5. DISHWASHER and OVEN**

The Landlord did not know how old the dishwasher was, but given the difficulty she had with finding someone to fix it and with obtaining parts for the appliance, I find it reasonable to infer that it is beyond the 10 year useful life of a dishwasher; I, therefore, order the Landlord to replace the dishwasher by purchasing and installing a new, up-to-date model and removing the old dishwasher from the property by April 30, 2019. The Tenants are authorized to reduce their rent by **\$50.00** a month starting on May 1, 2019, until a new dishwasher is installed and operating properly, and the old dishwasher removed from the property, if not completed by April 30, 2019.

In terms of the oven, I find that the Landlord’s comments about a solution being for the Tenants to use the downstairs oven indicates her acknowledgement that the oven in the main kitchen does not work properly, despite the attempted repair of it. She did not know how old the oven is, but unlike the dishwasher, a repair company was willing to attempt to repair the appliance. Further, the useful life of an oven is 15 years. I find a solution that meets the Tenants’ needs and saves the Landlord the cost of further repair or replacement of the oven is to have the upstairs oven replaced with the downstairs oven. The Landlord is ordered to arrange for the downstairs oven to be moved and installed upstairs, and the upstairs oven moved downstairs to where the downstairs oven is currently located. If this is not done **by April 30, 2019**, then I authorize the Tenants to reduce their rent by **\$50.00** per month starting in May 2019, until it is done.

## **6. FIFTH BEDROOM**

Unlike other aspects of the Tenants' Application, I find that they did not have an opportunity to view the "fifth" bedroom when they viewed the rental unit prior to signing the tenancy agreement. I infer from the Tenants' testimony in the hearing that they would not have agreed to pay as much rent, because the size of the fifth bedroom and its proximity to the furnace would have limited the number of people willing to share the rental unit and divide up the cost of the rent.

The Landlord said that the Tenants' did not submit documentary evidence of how they calculated the square footage of this bedroom or of any BC Building Codes, but neither did the Landlord. However, the Tenants said they saw how the Landlord measured the room, which was different from how they measured it. I find that the Tenants' evidence is more plausible than that of the Landlord, because the Tenants' calculation considers the reduction in floor space when measured below the room's shelf, compared to the Landlord's calculation above the shelf, which marginally expands the width of the room about half way up the wall. Further, the Landlord did not address the issue of the excessive heat and noise from the furnace.

The solution of turning the downstairs living room into another bedroom was a creative solution on the part of the Tenants; however, it turned out that this space is also negatively affected by the proximity to the furnace. In addition, it means that the other Tenants cannot use this common area of the living room. I find that as a result of the problems noted with the fifth bedroom, the rental unit turns out to be appropriate for four tenants, not five, so its value is thereby decreased to the Tenants by 20%. As a result, I decrease the net rent after this decision is finalized by 20%, pursuant to section 65(1)(f) of the *Act*. This reflects that the rental unit was advertised as having five bedrooms and two bathrooms, but one bedroom and the shower of one bathroom are not serviceable.

## **7. OTHER**

I find the list of expenses the Landlord said she incurred to be consistent with her obligations as a landlord under the *Act*, Regulation and Rules of Procedure.

A summary of the orders I have made in this decision are as follows:

1. The window repair request is dismissed with leave to reapply.
2. I reduce the rent by \$100.00 per month as compensation for the condition of the carpeting throughout the rental unit;
3. The Tenants are not entitled to a repair order nor a rent reduction regarding the downstairs bathroom, although the limited use of this room is acknowledged by number 6 below;

4. The Landlord must replace the dishwasher and I authorize the Tenants to reduce their rent by \$50.00 per month starting in May 2019, until a new dishwasher is installed and operational if this happens after the April 30, 2019 deadline.
5. The Landlord is ordered to switch the downstairs oven with the upstairs oven by April 30, 2019; the Tenants are authorized to reduce their rent by \$50.00 per month in May 2019, and every month thereafter until this is done.
6. I find that the condition of the "fifth" bedroom is insufficient for use as a bedroom, so I reduce the rent by 20% (also acknowledging the limited use of the second bathroom), of the net remaining rent once the above noted orders are calculated.

That is, the Tenants must pay:

\$3,480.00	-current rent,
<u>- 100.00</u>	-per month reduction in lieu of old carpeting,
\$3,380.00	
<u>x 80%</u>	-20% reduction in lieu of 5 <sup>th</sup> bedroom and 2 <sup>nd</sup> bathroom issues,
<u>\$2,704.00</u> =	new monthly rent, which will temporarily drop further, if the Landlord does not comply with points 4 and 5 above by April 30, 2019.

Since the Tenants were successful in their Application, I award them full recovery of their filing fee in the amount of \$100.00, which they may deduct from one rent payment in full satisfaction of this aspect of the award.

### Conclusion

Pursuant to section 65(1)(f) of the *Act*, the Tenants are entitled to a rent reduction of \$776.00 per month, in addition to deducting an additional \$100.00 from one rent payment once in lieu of recovery of their filing fee.

Further, the Landlord is ordered to install a new dishwasher and remove the old dishwasher from the property by April 30, 2019, or the Tenants may deduct \$50.00 from their rent per month if and until this is done after April 30, 2019.

The Landlord is ordered to replace the downstairs oven with the upstairs oven and either move the upstairs oven to where the downstairs oven is, or remove it from the property altogether by April 30, 2019, or the Tenants may reduce their rent by \$50.00 per month starting in May 2019.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).



This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 8, 2019

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Residential Tenancy Branch