



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, MNR, OLC, MNDC, PSF, RP, RR

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 14, 2019. Both parties also confirmed that the landlords served the tenants with the submitted documentary evidence via ExpressPost in the form of two separate packages on March 2, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Extensive discussions over 67 minutes failed to conclude the hearing. Both parties were advised that the hearing was adjourned. I direct both parties that no further

evidence is to be submitted nor shall it be accepted. Attached with this interim decision is a notice of adjournment hearing letter detailing the adjournment.

On April 9, 2019, the hearing resumed with both parties present who made submission and presented evidence.

The hearing proceeded as clarified in the initial hearing for:

- A monetary claim of \$13,746.50 for compensation as per items #1-9 on the monetary worksheet
- An order for the landlord to complete flood damage renovations
- An order for the landlord to pay for the cost of mold testing
- An order for the landlord to clean and repair the rain gutters

At the outset of the adjournment, the tenants clarified that they no longer seek

- An order for the landlord to complete flood damage renovations
- An order for the landlord to pay for the cost of mold testing

As such, it was clarified and confirmed by the tenants that they now only seek:

- A monetary claim of \$13,746.50 for compensation as per items #1-9 on the monetary worksheet
- An order for the landlord to clean and repair the rain gutters

During the hearing both parties confirmed that the tenants seek repairs to the south west corner gutter system.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed that the landlord shall have a certified professional inspect and if necessary repair the gutter system, specifically the south west corner of the house.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

The hearing proceeded on the tenants' monetary claim.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a monetary claim of \$13,746.50 which consists of:

|             |                                 |
|-------------|---------------------------------|
| \$315.00    | Repairs, Basement Railing       |
| \$504.00    | Rodent Control                  |
| \$250.00    | Lawn Maintenance                |
| \$210.00    | Repairs, Bathroom Sink          |
| \$756.00    | Compensation, Flood Clean up #1 |
| \$336.00    | Compensation, Flood Clean up #2 |
| \$588.00    | Compensation, Flood Clean up #3 |
| \$787.50    | Compensation, Mold Clean up     |
| \$10,000.00 | Compensation, Damaged Piano     |

The tenants seek compensation for emergency repairs, improvements and maintenance which the tenants argue the landlords have refused to pay for. The tenants argue that the landlords have failed to comply with the Residential Tenancy Act, the BC Building Code and the Health and Safety Act.

The tenants provided testimony that the landlord was notified at least 4 times regarding the basement railing as it was unsafe. The tenants stated that the hand railing was not attached at the top of the handrail making it unsafe for use. The tenants testified that the landlord was notified repeatedly on November 2, 7, 12 and 17, 2017 to resolve this issue, but never acted. The tenants stated that due to safety issues, the tenants commenced emergency repairs without further notification to the owner. The railing was completely removed, a metal plate was installed inside the wall to secure it, the wall plaster repaired and the railings attached permanently to the wall. The tenants stated that the tenants' time for repairs took 4 hours and seek \$300.00 plus tax of \$15.00

(\$75.00 per hour, the tenants rate for piano repairs). The tenants submitted 5 photographs of the basement stairwell railing and an invoice produced by the tenants dated January 1, 2018. The landlord dispute this claim stating that at no time were they notified of the safety issues for the railing, the landlord never authorized the work as emergency repairs and were never notified that the landlord would be conducting the repairs.

The landlords have disputed the tenants' claims stating throughout the hearing that the tenants failed to notify the landlords of these issues. The landlords also argue that at no time has the landlord been given an opportunity to address these issues or authorize any type of work remediation. The landlords stated that on one occasion the landlords attended the rental property following water flooding and witnessed a small amount of water only, repairs were done and the tenants never notified the landlords of any issues for the water. The landlords repeatedly argued throughout the hearing that the tenants never notified the landlords of any issues until they received the tenants' application for dispute.

### 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 these claims, the tenants seek monetary compensation as they claim the landlords have failed to provide the rental unit in a condition which complies with health, safety and housing standards. The tenants have referred to a faulty basement railing, pest control costs, lawn maintenance costs, sink repairs, water damage clean up on 3 occasions, mold cleanup and a water damaged piano. The landlords have argued throughout the hearing that at no time has the tenants properly notified the landlords of any issues. The landlords argued that they were never notified of the emergency repairs or given an opportunity to rectify the issues. The landlords argued that the tenants' issues were not reported to the landlords until the application for dispute was received. The tenants rely on the invoices made by the tenants for the repairs of each item completed by the tenants based upon industry standard costs.

Section 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Section 33 (3) of the Act also states 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 provide, 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.

Section 33 (5) states a landlord must reimburse the tenant the amounts paid for emergency repairs if the tenant claims reimbursement and give the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

However, Section 33(6) also states subsection (5) does not apply to amounts claimed by a tenant for repairs if the one or more of the following applies:

The tenant made the repairs before one or more of the condition subsection (3) were met.

In this case, the tenants have claimed that the landlords were notified of the repair issues. This claim was disputed repeatedly by the landlords. The tenant provided testimony that the landlords were verbally notified four times on November 2 and 7<sup>th</sup>, 12<sup>th</sup> and 17<sup>th</sup> for the basement railings. The tenants stated that because of not receiving a response emergency repairs were made without further contacting the landlords.

I accept the evidence of both parties and find on a balance of probabilities that the tenants have failed to provide sufficient evidence of notification to the landlords over the repair issues. These claims were repeatedly argued by the landlords. As such, I find that the tenants failed to comply with section 33 (3) of the act by making atleast 2 attempts to notify the landlords of the repair issues. I also note that the tenants relies solely on self-generated invoice(s) for all of the repair claims without sufficient evidence

of the actual costs for each repair. The tenants relied upon an hourly rate of \$75.00 per hour for piano repairs. On this basis, the tenants' monetary claim is dismissed.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: May 7, 2019

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Residential Tenancy Branch