



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute codes**      RP RR FF

### **Introduction**

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

- 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 make repairs to the rental unit pursuant to section 32;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord acknowledged receipt of the tenant's application but argued that it was not received within 3 days of the Notice of Dispute Resolution ("NDR") being made available to the tenant to serve on the landlord. The NDR was required to be served by June 8, 2019 and was served on the landlord two day later on June 10, 2019. The tenant testified that he was out of the country when the NDR was made available for him to serve. I find the landlord was sufficiently served and still had ample time to respond to the tenant's application.

### **Issue(s)**

Are the tenants entitled to compensation in the form of a past/future rent reduction for loss of use of a balcony and should the landlord be ordered to make repairs to the balcony?

Are the tenants entitled to recover the filing fee for this application?

### **Background and Evidence**

The rental unit is a one bedroom condominium in a strata complex with 40+ units. The tenancy began on December 1, 2018. The current monthly rent is \$1595.00. The unit has a 634 sqft interior. The balcony is approximately 60 sqft.

The tenant is claiming a rent reduction of \$300.00 per month retroactive to the beginning of the tenancy and a similar future reduction until such time the landlord repairs the balcony.

The tenant testified that he viewed the unit in October 2018 at which time he was told the balcony would be repaired by the following spring. He was reassured of this at the time of signing the lease in the beginning of November 2018. The balcony for his unit and other units had been temporarily shored with wooden beams and plywood. He was told the balcony was safe to use. The tenant testified that he subsequently learned from a neighbor that the balconies were not safe and that the landlord had no intention to fix them. The tenant testified that the owners were delaying the repair work as they were attempting to sell the building to a developer. The tenant testified that he sent an e-mail to the landlord in March 2019 requesting an update on the repair work and he was advised by the landlord that "their hands were tied".

The tenant testified that 1/3 of the balcony is obstructed by the wooden structure, there is a large hole on one corner and the balcony is not safe. The tenant submitted an engineering report from December 2015 showing that this has been an ongoing issue. The tenant submits that the report concluded repairs to the balconies of a number of units, including his, were required as soon as possible. The report recommended temporary shoring if repairs could not be conducted in the near future. The tenant submits that the report also recommended access to balconies be restricted until the repair work could be completed. The tenant also refers to strata meeting minutes from July 2018 in which it states access to balconies be restricted. The tenant also argues that a plywood structure obstructs the view and sunlight from entering the living area. The tenant submitted pictures of the wooden structure erected on the balcony. The tenant testified that access to the balcony is not completely blocked off and the side railings are still accessible. However, the tenant testified that they do not feel safe to use the balcony and do not intend to use it at all.

The landlord's agent argues that the tenants still have access to the balcony and that the wooden structure does not impede the view. The landlord's agent argues that only 10% of the balcony is restricted due to the wooden structure being inset from the railing. The landlord's agent argues that the balcony is less of a value than the finished interior space of the unit of which the tenants still have full use. The landlord's agent argues that the amount of rent reduction sought by the tenants is excessive. The landlord's agent testified that the balconies are common property to the strata and the landlord does not have the authority to do the repairs without approval from the strata council. The landlord's agent testified that a previous purchase offer from a developer did not go through so the owners are now working on having the repairs completed.

### **Analysis**

Subsection 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.

The definition of "residential property" under section 1 of the Act, includes common property.

Pursuant to section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

The evidence submitted by the tenant clearly shows the balcony is in need of repair and has been for quite some time. An engineering report from December 2015 recommended repairs as soon as possible and temporary shoring in the event repairs could not be undertaken in the immediate future. The temporary shoring was completed and has been in place since before the tenant took possession of the unit; however, the actual repair work has still not been undertaken. Although it is clear from the engineering report that access to the balconies be restricted, this was prior to the temporary shoring work. The engineering report also indicated that temporary shoring would make the balconies safe for access. The July 2018 strata minutes appear to reflect that access continue to be restricted; however, there was insufficient evidence presented to show that access in fact continued to be restricted and that the balconies still remained unsafe for access after the shoring work. The tenant confirmed that

access to the balcony has not been completely blocked off. It was evident from the pictures submitted by the tenant that a solid plywood sheet extended above the railing area and would partially restrict the view and sunlight from entering the living area. It was also evident that the wooden structure made the balcony less aesthetically pleasing.

I find that the tenant has suffered a partial loss of use of the balcony and has also suffered a loss of full enjoyment of the balcony and rental unit as a result of the restricted views and lighting.

As the tenant's continued to occupy and otherwise make use of the rental unit during the period in question, it is difficult to quantify the reduction in the value of their tenancy.

The balcony is less than 10% of the overall square footage of the rental unit and is neither essential to the tenants use of the rental unit as living accommodation or a material term of the tenancy. However, I do appreciate that a balcony could be an important factor in a tenant securing such a rental unit. As such, I find the tenants are entitled to a rent reduction of \$100.00/month as compensation for partial loss of use and enjoyment of the balcony as a result of the restricted views and aesthetics.

As the temporary shoring was in place at the time of entering into the lease, I make no award for a rent reduction prior to April 2019. I accept the tenant's testimony that he was advised that repairs would be completed by spring of 2019. Therefore, I award the tenants a past rent reduction of \$100.00 per month from April 1, 2019 to July 31, 2019.

**Accordingly, the tenants may reduce a future rent payment in the amount of \$400.00.**

The landlord is hereby ordered to make the necessary repairs to the balcony in a timely manner following the receipt of this decision. **The tenants are further permitted to reduce future rent in the amount of \$100.00 per month beginning on August 1, 2019** until such time as the repairs are satisfactorily completed. Once the balcony repairs have been completed, it is up to the landlord to provide written notice to the tenants that the repairs have been satisfactorily completed. Once written notice of completed balcony repairs is provided to the tenants, the \$100.00 future rent reduction is no longer applicable effective the next monthly rent due date following receipt of the notice.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

### **Conclusion**

The tenants are entitled to a one time past rent reduction from a future rent payment in the amount of **\$500.00 (\$400.00 + \$100.00 filing fee).**

In addition, effective **August 1, 2019**, the tenants are permitted to reduce future rent in the amount of **\$100.00 per month** until such time as the landlord serves written notice to the tenants of the satisfactory completion of the ordered repairs.

If there is any dispute on whether or not any of the balcony repairs entitling the future rent reductions have been satisfactorily completed, it is up to the tenants to make an application to dispute the reinstatement of rent. The tenants are not permitted to make any future rent reductions after being served with written notice by the landlord that the repairs have been satisfactorily 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: July 18, 2019

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Residential Tenancy Branch