



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AAT, ERP, LRE, OLC, PSF, RP, RR

### Introduction

On April 3, 2019, the Tenants made an Application for Dispute Resolution seeking an Order for access to the rental unit pursuant to Section 30 of the *Residential Tenancy Act* (the “Act”), seeking an emergency repair Order pursuant to Section 62 of the *Act*, seeking to suspend the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, seeking an Order to provide services or facilities pursuant to Section 62 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking a rent reduction pursuant to Section 65 of the *Act*.

This Application was set down for a hearing on May 21, 2019 and was subsequently adjourned to be heard on June 17, 2019 as there was not enough time to complete the hearing initially.

G.J. attended the adjourned hearing as an agent for the Landlord; however, the Tenants did not make an appearance. G.J. provided a solemn affirmation.

At the original hearing, the Tenants’ evidence was accepted and would be considered when rendering this decision. The Landlord’s evidence was served to the Tenants by registered mail on May 13, 2019 and was not received by the Tenants before that hearing. As service of that evidence did not comply with Rule 3.15 of the Rules of Procedure, I advised that service of this evidence would be reconsidered, pending both parties’ submissions on this issue, as the hearing would be adjourned. However, as the Tenants did not attend the hearing, I have excluded this evidence and it will not be considered when rendering this decision. The Landlord was still permitted to provide testimony with respect to this evidence, though.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to access to the rental unit?
- Are the Tenants entitled to an emergency repair order?
- Are the Tenants entitled to suspending the Landlord's right to enter?
- Are the Tenants entitled to an Order to comply?
- Are the Tenants entitled to an Order to provide services or facilities?
- Are the Tenants entitled to a repair Order?
- Are the Tenants entitled to a rent reduction?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

At the original hearing, all parties agreed that the tenancy started on May 1, 2015 and rent was established at \$900.00 per month, due on the first day of each month. A security deposit of \$425.00 was also paid.

At the original hearing, the Tenant advised that he wrote a letter in September 2018 to the Landlord about a broken window that was falling out of its frame. He stated that the Landlord took pictures of this on September 4, 2018 and that there were no subsequent repairs completed. The window fell entirely out of the frame on October 10, 2018 and broke in the Tenants' apartment. After advising the Landlord of this, the window was boarded up by the Landlord. He stated that his sister's husband threw out the window frame and no one told him to keep it.

He submitted that the rent was not paid on November 1, 2018 because there was no progress on the window repair. When the Landlord served a 10 Day Notice for Unpaid Rent on November 2, 2018, he then paid the rent. He stated that the window was eventually fixed on November 13, 2018; however, this window was replaced with a static window that could not be opened. He advised that this is a big window that is

essential for air flow in the rental unit, and that he could previously open it. He is seeking compensation in the amount of two months rent, or the equivalent of **\$1,800.00**.

G.J. confirmed that the Tenant notified the Landlord of this issue in September 2018 and that the window was looked at on September 5, 2019. He advised that the window came out of the frame due to grime and dirt in the tracks of the sliding part of the window system and this pre-existing damage caused the window to fall out of its tracks. On October 14, 2019, the window collapsed and broke, a handyman completed a temporary repair, and a repair request was initiated. He submitted that the Technical Reports from the window installation company indicated that the window in question was part of a complete sliding system including the frame, and that in order for it to be replaced as it was before it broke, the frame was necessary. However, as the Tenants disposed of the frame, this set back the repair timeline and it was eventually determined that without the frame, it was not possible to re-install a similar window as the new sliding window systems were not compatible. He stated that the building manager advised the Tenant not to dispose of the window frame, likely on or around October 15, 2019.

The original hearing was adjourned at this point. The Tenant submitted further claims for compensation in the amounts of **\$900.00, \$1,100.00, and \$700.00**; however, as he did not attend the adjourned hearing to provide testimony with respect to these issues, I have dismissed these claims without leave to reapply.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* requires that the Landlord maintain the rental unit 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, make it suitable for occupation by the Tenants. As well, the Tenants are responsible for maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit, and they must repair damage to the rental unit or common areas caused by the actions or neglect of the Tenants.

When reviewing the evidence and testimony before me with respect to the Tenants' claim, there is no dispute that the window required repairs. However, the undisputed evidence is that the reason the window came out of its frame in the first place is because there was grime and dirt in the tracks of the sliding part of the window system. As such, I am satisfied that the problem with this window was caused by the Tenants' negligence.

Regardless, the consistent evidence is that the Landlord took the necessary steps, within a timely manner, to address repairing this issue. However, the length of this repair took longer due to the Tenants disposing of the original window frame, causing the Landlord to have to replace the window with as close a substitute as possible.

Based on the totality of the evidence before me, I do not find that a Repair Order is necessary to be granted as the window has been fixed to the best of the Landlord's ability, despite the negligence of the Tenants. Furthermore, as this problem came about as a result of the Tenants' actions, I do not find that the Tenants have established that they suffered a loss as a result of the Landlord's inaction or that they are owed monetary compensation for any loss they suffered. Consequently, I dismiss the Tenants' claims on this point in their entirety.

### Conclusion

Based on the above, I dismiss the Tenants' Application 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: June 28, 2019

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Residential Tenancy Branch