



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT RP RR

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to reduce rent for repairs and facilities not provided pursuant to section 65; and
- An order that the landlord perform repairs pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The tenant attended and was assisted by their advocate.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the evidence I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?  
Should the rent for this tenancy be reduced?  
Should the landlord be ordered to make repairs to the rental unit?

### Background and Evidence

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

This periodic tenancy began in 2003. The monthly rent provided on the written tenancy agreement is \$860.00 payable by the first of each month. The rental unit is subsidized and the tenant is responsible for paying a portion of the monthly rent to the landlord. The balance of the rent is paid by a government agency directly to the landlord. The amount of the subsidy is calculated based on the tenant's income, assets and family composition and the tenant is responsible for applying for and recalculating the subsidy amount annually.

In June, 2017 there was a fire to the neighbouring rental suite which caused smoke and water damage to the rental unit. The parties agree that the damage required major repairs and remediation work. The landlord submits that the repairs were substantially completed by their agents by July 2017. The tenant submits that major repairs including finishing the floors of the bathroom, bedrooms and living rooms remained outstanding as of July 2017.

The tenant made a written request to the landlord to perform the outstanding repairs by a letter issued by their advocate dated November 29, 2017. The tenant testified that they followed up their request by numerous phone calls to the landlord over the subsequent months. The landlord responded to the tenant by a letter dated February 6, 2018. The landlord submits that they requested further information on what repairs the tenant believed were outstanding and made reasonable efforts to attempt an inspection of the rental suite.

The landlord submits that the tenant caused delays in finalizing repairs to the rental suite as they did not respond to the landlord's request for details of deficiencies in a timely manner, prevented the landlord from entering the rental unit to inspect its condition, and maintained the rental unit in a cluttered manner that prevented them from performing repairs.

The parties agree that some repairs were completed in December 2018. The tenant gave evidence that they feel the rental unit has outstanding issues that the landlord has failed to address as of the date of the hearing. The tenant submitted into evidence copies of photographs of areas of the suite and correspondence with the landlord requesting repairs.

## Analysis

The landlord submits that there is no authorization under the Act for the Branch to issue a monetary award for a subsidized rental unit. The landlord submits that the amount of the monthly rent paid by the tenant in a subsidized unit is calculated based on their income and assets and therefore not subject to an order from the Branch reducing the rent or allowing a monetary award equivalent to a reduction of rent.

I do not find the landlord's submissions to be persuasive. The manner in which the monthly rent for a tenancy is calculated is immaterial to the right of a tenant to seek a reduction of rent equivalent to the value of the tenancy. In a subsidized rental unit such as the case at hand, the portion of the rent for which the tenant is personally responsible for paying to the landlord is calculated in accordance with a formula provided by a government agency. The balance of the rent owing is paid directly by the government agency to the landlord. However, this does not affect the landlord's right to the full balance of the monthly rent nor the tenant's responsibility to ensure the rent is paid in full to the landlord.

In the present case the tenancy agreement dated July 23, 2003 signed by the parties provides that the base rent for this tenancy is \$860.00. While I accept the evidence of the parties that the amount of the rental subsidy and the portion of the rent paid by the tenant fluctuated throughout the course of this tenancy, I find that under the terms of the tenancy agreement the tenant was obligated to ensure the full amount of rent was paid to the landlord by the first of each month. I find that the subsidized nature of this tenancy does not exclude it from application of the Act nor does the source of the monthly rent payment preclude a monetary award in the tenant's favour.

In accordance with Residential Tenancy Rule of Procedure 6.6 the onus lies with the applicant to establish their claim on a balance of probabilities.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce

the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find that there is insufficient evidence to determine that the rental unit is in need of ongoing repairs and work. The tenant's evidence consists of subjective complaints and some photographs of areas that the tenant submits require remediation work. I find the photographs submitted to be unhelpful as they merely show some close-up aspects of a rental suite and do not demonstrate specific deficiencies. Many are unclear as to what area of the suite they purport to represent, and I find they are insufficient to determine that repairs are required. I find that the tenant has not established that the rental suite at present requires repairs or that the landlord has been negligent in not providing necessary repairs.

Consequently, I dismiss the portion of the tenant's application seeking an order that the landlord perform repairs and to reduce rent for repairs and facilities not provided.

Based on the totality of the evidence, I find that the damage to the rental unit and the prolonged period during which full restoration has not been finalized has had some negative impact on this tenancy. However, I find the monetary award suggested by the tenant to be excessive and out of proportion with the evidence.

I accept the evidence of the parties that the landlord received notification from their contractors that repairs to the damaged suites were completed in July, 2017. The evidence of the tenant is that there were still outstanding work to be done at that point and they raised the issue of outstanding repairs with the landlord by a letter dated November 29, 2017. While the tenant submits that they raised the issue with the landlord on numerous occasions, I find that there is insufficient evidence to show that the need for additional repairs was communicated to the landlord prior to November, 2017.

The landlord responded to the tenant's written request by a letter dated February 6, 2018. The tenant testified that they attempted to follow up with the landlord on numerous occasions prior to the February letter. I find that there was a delay between the tenant's reporting of outstanding issues in November 2017 and the response issued by the landlord in February 2018. I find that this delay spanning several months to be unreasonable under the circumstances.

I accept the evidence of the parties that the landlord has made some additional repairs to the rental unit. I further accept the evidence of the landlord including their written

reports, photographs and testimony that their efforts to perform repairs and inspect the rental unit were stymied by the tenant. I find that the tenant contributed to the delay in repairs being performed in the rental unit by failing to provide the landlord with access to the suite in a timely manner and keeping personal items in a fashion that interfered with the landlord's ability to inspect the suite.

I accept the evidence of the parties that repairs to the bathroom floors of the rental unit were completed in December 2018. These issues were raised by the tenant in their correspondence of November 2017. I find that a period of close to a year is an unreasonable period for repairs to be completed. I find that the tenant contributed to the delay but there is insufficient evidence to conclude that the extended duration is wholly attributable to the tenant.

The tenant gave some evidence regarding the negative impact the uncompleted work had on their tenancy and their enjoyment of the rental suite. The tenant testified that their family member could no longer reside in the suite and moved out and that they had to make alternate arrangements for some amenities.

Under the circumstances, I find that a nominal monetary award which reflects that the tenants did suffer some loss in the value of the tenancy agreement is appropriate. Based on the evidence, I find that the loss had little impact on the tenant's ability to occupy the rental unit and that the tenant contributed to the protracted duration of the repairs.

I find that a nominal monetary award in the amount of \$500.00, the equivalent of approximately 10% of the original stated monthly rent of \$860.00 for 6 months to be appropriate. In coming to this determination, I have also taken into consideration the amount of the rent that is subsidized and the annual rent increases for the tenancy.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$500.00 which includes the loss of the value of the tenancy to the date of the hearing.

As this tenancy is continuing, I allow the tenant to recover the monetary award by reducing the monthly rent by that amount on the next monthly rental payments to the landlord. In the event that is not feasible I issue a Monetary Order in the tenant's favour.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: September 26, 2019

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Residential Tenancy Branch