



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

RP, RR, and OLC

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant has applied for a rent reduction; for an Order requiring the Landlord to make repairs to the rental unit; and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*.

The Tenant stated that on September 18, 2019 the Dispute Resolution Package and evidence she submitted to the Residential Tenancy Branch in September of 2019 and were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In October of 2019 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on October 07, 2019. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In November of 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on November 05, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed but is only referenced in this written decision if it is relevant to my decision.

I note that some of the testimony presented at the hearing was entirely unrelated to the issues in dispute at these proceedings, such as the submission that the Tenant came to the rental unit on August 31, 2019. I specifically note that any testimony that is not directly related to the issues in dispute at these proceedings is not referenced in this decision.

### Preliminary Matter

The Tenant withdrew her application for an Order requiring the Landlord to provide her with documents.

At the hearing the Tenant withdrew her application for an Order requiring the Landlord to repair a light switch.

### Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to make repairs?  
Is the Tenant entitled to a rent reduction?

### Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on September 01, 2019 and that a condition inspection report was completed at the start of the tenancy. A copy of the condition inspection report was submitted in evidence.

The Tenant submits that after she moved into the rental unit she determined there was hairspray residue throughout her apartment, particularly in the bedroom.

The Tenant is seeking an Order requiring the Landlord to remediate the smell in the rental unit; to determine if there is mold in the rental unit, to remediate mold if it is found, and to provide paint. The Tenant is also seeking compensation for having to sleep in the living room as a result of these alleged deficiencies.

The Tenant stated that:

- at the start of the tenancy the Landlord promised to provide paint to the Tenant, for the purpose of painting the doors;
- at the start of the tenancy there was a sticky residue on the floor;
- she does not believe the previous occupant washed the floors, as they were filthy when the Tenant first washed them;
- the floors were still sticky after she washed them;
- she had to wash the floor three times before the residue was completely removed;
- she had difficulty sleeping the bedroom because the smell of hairspray was so strong;
- she noticed the smell when the inspection report was being completed but she did not mention it to the Agent for the Landlord as she thought the smell would dissipate;
- she reported the smell of hairspray to the Landlord on September 01, 2019, after sleeping in the rental unit for one night;
- the hairspray has, and continues to, irritate her eyes on a daily basis;
- she was able to sleep in the bedroom until September 15, 2019, but only if she had the window open and a portable fan operating;
- she stopped sleeping in the bedroom after September 15, 2019, as she was concerned that the portable fan would create a safety hazard when it rained;
- she has slept in the living room since September 15, 2019;
- she kept the doors open in the living room for ventilation, until November 01, 2019 when it became too cold to do so;
- sleeping in the living room has been a significant inconvenience for a variety of reasons, including discomfort and the inability to socialize in her home;
- she has also noticed a musty odor and stains on a wall that she thinks may be indicative of mold and should, therefore, be investigated and remedied;
- when the Agent for the Landlord #2 was in the rental unit inspecting an electrical outlet, the bedroom door was closed so he may not have smelled the odor from that room; and
- when the Agent for the Landlord #2 was in the rental unit inspecting an electrical outlet, she did not mention the odor because he was not in the unit for the purposes of investigating the odor.

The Agent for the Landlord stated that:

- she inspected the rental unit at the start of the tenancy with the Tenant;
- she did not notice any unusual smells in the rental unit during that inspection;

- the Tenant did not report any unusual smells in the rental unit during the inspection;
- she did not notice any sticky residue on the floor during the inspection;
- she told the Tenant she would ask the President if he would be willing to provide paint for the doors;
- she did not, at any time, promise to provide the Tenant with paint to paint the doors; and
- she observed the former occupant washing the floor of the rental unit on August 31, 2019.

The Agent for the Landlord #2 stated that:

- he was in the rental unit in September of 2019, although he cannot recall the exact date;
- he was in the unit for the purposes of inspecting an electrical outlet;
- he did not notice any unusual smells in the unit, although he did not go into the bedroom; and
- on August 31, 2019 he observed the former occupant washing the floor of the rental unit.

The Witness for the Landlord stated that:

- she is the former occupant of the rental unit;
- she vacated the rental unit on August 31, 2019;
- she washed the floor of the rental unit on August 30, 2019 and August 31, 2019;
- she did not use hairspray in the rental unit;
- when she vacated the rental unit, there were no smells of hairspray or any similar spray; and
- when she vacated the rental unit, there was no sticky residue on the floor of the rental unit.

In response to questions asked by the Tenant, the Witness for the Landlord stated that:

- she has long hair that she often puts in a ponytail that she pins to the top of her head;
- she does not use hairspray with this hairstyle; and
- on August 30, 2019 she only washed areas of the floor that were not covered with packing boxes.

When the Tenant asked the Witness why she would not have observed the Witness washing the floors when she was at the unit on August 31, 2019, if the Witness had been washing the floors, the Witness for the Landlord immediately replied that the Tenant did observe her washing the floors. After the Witness exited the teleconference, the Tenant stated that she did not see the Witness washing the floor in the unit.

After the Witness for the Landlord exited the teleconference, the Tenant stated that the Witness was physically unable to wash the floors. The President of the company that owns the rental unit stated that the Witness for the Landlord was physically able to wash the floors.

After the Witness for the Landlord exited the teleconference, the Tenant stated that if the Witness did not use hairspray in the rental unit, she used a spray that was similar to hairspray.

The Tenant submitted a letter from a senior's outreach worker, in which the worker declared that she went to the rental unit on October 03, 2019, at which time she noticed an unpleasant odor in the rental unit, most particularly in the bedroom. The worker declared that after being in the rental unit for approximately twenty minutes, her nose, throat, and eyes became irritated.

The Landlord did not raise any issues in regard to the letter from the outreach worker. The Tenant stated that the outreach worker is available as a witness, but that it was not necessary to call this witness if the letter is to be accepted at face value.

The Tenant submitted an undated email from a personal friend, in which the friend declared there was a strong odour in the rental unit, particularly in the bedroom. The friend declared that the odor caused her eyes to itch after approximately 10 minutes.

### Analysis

Section 32(1) of the *Residential Tenancy Act (Act)* requires landlords to provide and 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 a tenant.

It is commonly understood that a landlord must provide a tenant with a rental unit that is reasonably clean at the start of the tenancy.

There is a general legal principle that places the burden of proving a claim on the person who is claiming compensation, not on the person who is denying the claim. In these circumstances, the burden of proving that the rental unit required cleaning and that repairs are required rests with the Tenant.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

On the basis of the condition inspection report that was submitted in evidence, which was signed by both parties on August 31, 2019, I find that the report does not indicate the presence of any unusual odors in the rental unit nor does it indicate the floors were dirty. I therefore find that, pursuant to section 21 of the *Residential Tenancy Regulation*, there were no unusual odors in the rental unit at the start of the tenancy and the floor in the rental unit was clean at the start of the tenancy.

I find that the evidence submitted by the Tenant does not constitute a “preponderance of evidence to the contrary” and is insufficient, therefore, to discount the information provided on the condition inspection report.

I find that the testimony of the Tenant in regard to the odor and the condition of the floors at the start of the tenancy cannot be considered a “preponderance of evidence to the contrary” as it is refuted by the testimony of the Agent for the Landlord, who stated that she did not notice an odor when the condition inspection report was being completed; the Tenant did not mention an odor during the inspection; she did not notice a sticky residue on the floor when the condition inspection report was being completed; and she observed the Witness for the Landlord washing the floor of the rental unit on August 31, 2019.

I find that the testimony of the Tenant in regard to the odor/floors cannot be considered a “preponderance of evidence to the contrary” as it is refuted by the testimony of the Witness for the Landlord, who stated that there was no odor in the rental unit at the end of her tenancy, she did not use hairspray or any spray that would leave an odor; she washed the floors on August 30, 2019 and August 31, 2019; and there was no sticky residue on the floors at the end of her tenancy. I find the Witness for the Landlord to be a credible, seemingly unbiased witness.

I find that the testimony of the Tenant in regard to the odor/floor cannot be considered a “preponderance of evidence to the contrary” as it is refuted by the testimony of the Agent for the Landlord #2, who stated that he did not notice any odors when he was in the rental unit in September of 2019 and that he observed the Witness for the Landlord washing the floor of the rental unit on August 31, 2019.

In adjudicating this matter, I have considered the Tenant’s testimony that the hairspray in the rental unit has, and continues to, irritate her eyes on a daily basis. I find that this testimony lacks credibility. In my view, if the odor in the rental unit at the start of the tenancy was strong enough to irritate eyes, it would have been noticed by the Agent for the Landlord when the condition inspection report was completed and the Tenant would have mentioned it at that time. Similarly, if the odor in the rental unit was strong enough to irritate the Tenant’s eyes on a daily basis, I would expect that it would have been noticed by the Agent for the Landlord when he was in the rental unit in September of 2019. In addition, it is not my experience that the smell of hairspray remains in a room for extended periods of time.

In adjudicating this matter, I have placed little weight on the letter from a senior’s outreach worker, in which the worker declared that she went to the rental unit on October 03, 2019, at which time she noticed an unpleasant odor in the rental unit, most particularly in the bedroom and that her nose, throat, and eyes became irritated. Although I have no reason to question the credibility of this seemingly unbiased witness, I find that her evidence has little evidentiary value.

I find that the evidence of the senior’s outreach worker has little evidentiary value, as is reporting observations that were made almost one month after the start of the tenancy. I find it entirely possible that the odor and irritant the outreach worker noticed was the result of a substance introduced by the Tenant after the start of the tenancy, such as a strong cleaning agent.

In adjudicating this matter, I have placed little weight on the email from the Tenant’s friend, in which she also reported a strong odor and that her eyes itched after being in the unit. I find that this individual cannot be considered an unbiased witness and that her evidence is subject to the same frailties as the evidence of the senior’s outreach worker.

In adjudicating this matter, I have placed no weight on the Tenant’s submission that the Witness for the Landlord was physically unable to wash the floors. I have placed no

weight on this submission as there is no evidence to corroborate the Tenant's testimony in this regard and it is refuted by every other participant in the hearing, including the Witness for the Landlord.

As the Tenant has submitted insufficient evidence to establish that there was an odor in the rental unit at the start of the tenancy or that the floor of the rental unit required cleaning at the start of the tenancy, I dismiss the Tenant's application for an Order requiring the Landlord to clean the rental unit or to remediate the smell or hairspray (or any other similar substance).

In adjudicating this matter, I have placed no weight on the photographs submitted in evidence by the Tenant, which depict the area the Tenant speculates has been contaminated by mold. As the photographs do not depict staining that is typically associated to mold growth, I find that the photographs do not corroborate the Tenant's suspicion that this area is contaminated by mold. In the absence of evidence to establish that there is mold in the rental unit, I dismiss the Tenant's application for an Order requiring the Landlord to inspect the rental unit for mold.

As the Tenant has submitted insufficient evidence to establish that there was an odor in the rental unit at the start of the tenancy or that the floor of the rental unit required cleaning at the start of the tenancy, I dismiss the Tenant's application for compensation as a result of her decision to sleep in the living room.

In adjudicating this matter, I am troubled by the undisputed evidence that the Tenant reported the odor on September 01, 2019 and that she has been sleeping in the living room since September 15, 2019. Although this evidence supports the Tenant's submission that there is an odor, it is not lost on me that there could be nefarious reasons for such actions.

Although I accept that it is possible that the Tenant is telling the truth in regard to the smell in the unit, I must base this decision on my finding that the Tenant has failed to meet the burden of proving her claim.

I find that the Tenant has submitted insufficient evidence to establish that the Agent for the Landlord promised to provide her with paint at any time before or during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates this submission or that refutes the Agent for the Landlord's testimony that she did not promise to provide the Tenant with paint. As there is no



evidence that paint was promised to the Tenant, I dismiss the Tenant's application to be provided with paint.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution has merit and I therefore dismiss her claim to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Tenant's Application for Dispute Resolution is dismissed in its entirety.

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: November 22, 2019

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Residential Tenancy Branch