



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes FFT PSF RP RR

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order to provide services or facilities required by the tenancy agreement, for an order for regular repairs, and for an order to reduce the rent, pursuant to the *Act*.

The Tenants, the Landlord, and the Landlord's Agent S.A. attended the hearing at the appointed date and time and provided affirmed testimony.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord stated that he had received the Application and the documentary evidence from the Tenants and had reviewed it prior to the hearing. The Landlord confirmed that he did not submit any documentary evidence in preparation for the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

At the start of the hearing, it was discussed that the parties had a previous hearing on May 28, 2019 in which the Tenants had applied for an order to provide services or facilities required by the tenancy agreement, for an order for regular repairs. The Tenants provided a copy of the decision dated May 28, 2019 which indicates that an Arbitrator addressed the Tenants' claims relating to a broken stove, fridge and roof.

The Tenants stated that their claims for an order to provide services or facilities required by the tenancy agreement, and for an order for regular repairs relate to the above-mentioned items which have been addressed in the May 28, 2019 hearing. The parties confirmed during the hearing that they received a copy of the May 28, 2019 decision.

As such, I find that the Tenants claims for an order to provide services or facilities required by the tenancy agreement, and for an order for regular repairs have already been determined and that these matters are *res judicata*. I deny reconsideration of these matters during this hearing.

The hearing continued based on the Tenants' Application for a rent reduction and the return of their filing fee.

Issue(s) to be Decided

1. Are the Tenants entitled to a rent reduction, pursuant to Section 65 of the Act?
2. Are the Tenants entitled to the return of their filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2012. Currently, the Tenants are required to pay rent to the Landlord in the amount of \$1,050.00, which is due to be paid to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$650.00.

The Tenants stated that they are seeking a rent reduction in relation to the fact that the Landlord has not complied with a previous decision dated May 28, 2019. The Tenants provided a copy of the decision which stated;

***"I Order the landlord to complete the following course of repairs - within 6 weeks following the date of this Decision (May 28, 2019).***

- *Repair or replace* the existing refrigerator so it operates as intended.
- *Repair or replace* the existing stove so it operates as intended.
- *Repair* the roof as required to abate water ingress at the chimney."

The Tenants stated that they continue to not have use of their fridge which was provided to them as part of their tenancy. The Tenants stated that they have notified the Landlord on numerous occasions about the broken fridge, to which the Landlord has not yet repaired or replaced the fridge, despite being ordered to do so. The Tenants stated that they purchased a small fridge as a result, however, it does not hold many items, making it inconvenient and costly for the Tenants.

The Tenants stated that their stove does not work at all and that they only have use of two elements on the stove. The Tenants stated that they have notified the Landlord on several occasions about the issue and that the Landlord has not taken any steps to resolve the issue despite being ordered to do so. The Tenants stated that they have been unable to cook meals at home as a result.

Lastly, the Tenants stated that roof of the rental unit leaks, which is causing staining to the ceiling as well as water coming through the ceiling and entering the rental unit. The Tenants stated that they have had to

put some of their items in storage and disposed of damaged items as a result. The Tenants stated that the Landlord has not repaired the roof, despite being ordered to do so.

As such, the Tenants are seeking a rent reduction in the amount of \$300.00 per month as the Landlord has not made any attempts to repairing or replacing the broken items. If successful, the Tenants are also seeking the return of the filing fee.

In response, the Landlord stated that he had not received a copy of the decision dated May 28, 2019 until a month after the hearing. The Landlord stated that he had someone patch the roof "about a year and a half ago". The Landlord stated that he has not made any repairs or replaced any of the above-mentioned items since the decision dated May 28, 2019.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

I accept that the parties attended a hearing on May 28, 2019 during which the Arbitrator ordered that the Landlord repair or replace the fridge, stove and roof within 6 weeks from the date of the decision. As such, I find that the Landlord had until July 9, 2019 to comply with the Arbitrator's orders.

I accept that the parties agreed that no action has been taken by the Landlord to repair or replace the broken fridge and stove in the rental unit, as well as repair or replace the leaking roof of the rental unit despite being ordered to do so. I find that the Tenants continue to reside in the rental unit without the use of the fridge, without the use of the oven, with limited use of the stove, and with a leaking roof.

Based on the evidence before me, overall, I find that the Tenants have established an entitlement to the recovery of \$300.00 per month from the date of the decision made on May 28, 2019 in the amount of (\$300.00 x 6 months = \$1,800.00).

As the Tenants were successful with their Application, I find that they are entitled to recover the \$100.00 filing fee paid to make the Application.

I find that the Tenants have established an entitlement to a retroactive rent reduction in the amount of \$1,800.00 as well as the return of the filing fee in the amount of \$100.00 for a total monetary award of \$1,900.00. I order that the Tenants deduct the amount of \$1,900.00 from future rent payments.

I further find that the Tenants are entitled to reduce their rent by \$300.00 for each month moving forward, starting on December 1, 2019. As the parties agreed that the Tenants are required to pay rent in the amount of \$1,050.00, after the rent reduction is applied, the Tenants will be required to pay rent in the amount of \$750.00 on the first day of each month.

I order that the rent will remain at this amount until the Landlord complies with the orders outlined in the May 28, 2019 decision and applies for dispute resolution at the RTB. The Landlord will have to demonstrate to the satisfaction of an RTB arbitrator that the fridge, stove and roof have been sufficiently repaired or replaced as previously ordered in the May 28, 2019 decision, in order for the Tenants' rent to be returned to \$1,050.00 per month.

#### Conclusion

The Landlord failed to comply with the orders to repair or replace the fridge, stove and roof as outlined in the May 28, 2019 decision.

The Tenants have established an entitlement to a retroactive rent reduction in the amount of \$1,800.00 as well as the return of the filing fee in the amount of \$100.00 for a total monetary award of \$1,900.00. The Tenants are entitled to deduct the amount of \$1,900.00 from future rent payments.

The Tenants are entitled to reduce their rent by \$300.00 for each month moving forward, starting on December 1, 2019 in the amount of \$750.00, which is due on the first day of each month.

The rent will remain at this amount until the Landlord complies with the orders outlined in the May 28, 2019 decision and applies for dispute resolution at the RTB. The Landlord will have to demonstrate to the satisfaction of an RTB arbitrator that the fridge, stove and roof have been sufficiently repaired or replaced as previously ordered in the May 28, 2019 decision, for the Tenants' rent to be returned to \$1,050.00 per month.

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 29, 2019

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Residential Tenancy Branch