



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes FFT, LAT, LRE, MNDCT, OLC, PSF, RR

#### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70
- an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to sections 33 and 62; and,
- authorization to recover the filing fee for this application pursuant to section 72.

This matter was originally heard on September 13, 2019. The original hearing was adjourned and this is the reconvened hearing. In the original hearing, the landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution and the tenant's amendment to her application and I found that the landlord was served in accordance with the Act.

Both parties attended the reconvened hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The parties both testified that a related hearing was scheduled for December 5, 2019 regarding a notice to end tenancy. The hearing number for that matter is referenced on the first page of this decision. The issues relating to that hearing are not addressed in this hearing.

Preliminary Matter: Tenant's request for an adjournment

The tenant made a request for an adjournment at the hearing. The landlord opposed the tenant's request for an adjournment.

The tenant testified that she required an adjournment because she is suffering from a medical condition and she was under the influence of medications. The tenant submitted a note from a physician dated November 29, 2019 which stated that, "Due to her medical illness she may not be able to participate in planned activities over the next seven days."

The tenant had also requested an adjournment at the commencement of the original hearing. The tenant previously requested an adjournment to have more time to prepare her application. That request for an adjournment was denied.

*Residential Tenancy Branch Rule 7.8* states that a party may request an adjournment at a hearing. *Residential Tenancy Branch Rule 7.9* states the criteria for granting an adjournment:

#### 7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Although the tenant claimed that she was not medically able to proceed with the hearing, I find that she has not provided sufficient evidence to substantiate that claim. The medical note provided by the tenant did not explain why the tenant could not medically participate in a telephonic hearing. The medical note did not give any details as to the tenant's medical limitations or how these limitations affected the tenant. Furthermore, the tenant appeared to be cognizant and able to articulate herself during the telephonic hearing. For the forgoing reasons, I denied the tenant's request for an adjournment and the hearing proceeded.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70?

Is the tenant entitled to an order to change the locks to the rental unit pursuant to section 70?

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Is the tenant entitled to an order for the landlord to provide services or facilities required by law pursuant to section 62?

Is the tenant entitled to an order to the landlord to make emergency repairs to the rental unit pursuant to sections 33 and 62?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The tenant testified that the monthly rent was 4765. She testified that a fire occurred at the East wing of the property on April 7, 2019. As a result, the occupants of the property, including the tenant, were evacuated until June 1, 2019.

The tenant claimed that the locks were changed while the building was evacuated preventing her from accessing the rental unit. The tenant testified that construction crew had access to her rental unit while the fire damage was being remediated and personal possessions were removed.

In her application, tenant requested an order requiring the repair of the elevator and her balcony. The application also requested a rent reduction of \$100.00 per month for lack of access to the elevator and \$150.00 per month for loss of access to the balcony. In the hearing, the tenant also complained that the building laundry room was not functioning. However, this complaint was not stated in the tenant's application.

The tenant testified that the elevator has not been operating since the fire. The tenant testified that she needed access to the elevator even though she lived on the ground floor. The tenant testified that she has difficulty ambulating as a result of her medical condition and she needs to use the elevator to access the laundry room and the car park.

The tenant testified that her balcony was damaged by another tenant when their moving truck collided with her balcony on June 1, 2019. The tenant testified that the balcony railing was damaged and she cannot open the window to the balcony.

The tenant requested an order that the landlord comply with the following sections of the *Act*:

- (i) s. 28(a)(b)(c)(d): regarding the tenant's right to quiet enjoyment;
- (ii) s. 29(1)(a)(b)(d): regarding restricting the landlord's right to enter the rental unit;
- (iii) s. 30(1) (b), 5): regarding the protection of the tenant's right of access; and,
- (iv) s. 31(1)(1.1)(a)(b): regarding the prohibition of the changing of locks.

The tenant has also claimed compensation for food expenses, transportation expenses, veterinarian expenses and hotel expenses incurred while the fire damage was being remediated. The tenant also claimed \$15,000.00 in aggravated damages. The tenant also claimed damages for loss of quiet enjoyment of the rental unit.

The landlord testified that the building needed to be evacuated following the fire. The landlord testified that the evacuation was required by their insurance. The landlord testified that the tenants were placed in a hotel for three weeks and they were then placed in shelter. The landlord testified that they spent over \$113,000.00 in hotel costs to house the occupants of the building after the fire, including \$8,000.00 in hotel costs spent on the tenant

In addition, the landlord testified the tenant's rent for April 2019 was returned to the tenants and the landlord did not collect rent for May 2019.

The landlord testified that they were attempting to repair the balcony as quickly as possible but it has been repaired yet. The landlord testified that even though the balcony railing was damaged, the tenant was able to still use the balcony for storage.

The landlord testified that the tenant did not need elevator access since her rental unit is on the ground floor and there are no amenities on the upper floors.

The landlord argued that they are not responsible for the tenant's personal expenses and there was no evidence submitted by the tenant in support of her claim for aggravate damages.

#### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 65(1)(c) and (f) of the *Act* allows me to issue a monetary award to reduce past rent paid by the tenants to the landlords if I determine that there has been a reduction in the value of a tenancy agreement. The tenants have requested compensation for numerous deficiencies in the rental unit which the tenants contend have reduced the value of the tenancy agreement. Each of the tenants' claims are addressed as follows:

- (i) *Loss of use of balcony*

I am satisfied that the balcony has not functional since June 1, 2019 and I find that a reasonable estimate of the amount of the tenant's loss regarding the loss of use of the balcony to be 5% of the monthly rent. Accordingly, I shall award the tenant \$535.50 in reduction of rent in compensation for the loss of use relating to the balcony, calculated as follows:

$$(\text{Monthly rent of } \$765.00) \times (10\%) \times (7 \text{ months}) = \$535.50$$

Furthermore, section 32 of the *Act* requires landlords to maintain residential properties in a state of repair that "...complies with the health, safety and housing standards required by law" I find that the condition of the balcony does not comply with this standard. Pursuant to section 32 and 65 of the *Act*, I order the landlord to repair the balcony to a safe and habitable standard. Furthermore, until the balcony is so repaired, the tenant may deduct the sum of \$76.50 from each monthly rent payment, commencing on January 1, 2020, pursuant to section 65(1)(b).

(ii) *Loss of use of elevator*

I am satisfied that the elevator has not functioning since June 1, 2019 and I find that a reasonable estimate of the amount of the tenant's loss regarding the loss of use of the elevator to be 5% of the monthly rent. Accordingly, I shall award the tenant \$267.50 in reduction of rent in compensation for the loss of use relating to the elevator, calculated as follows:

$$(\text{Monthly rent of } \$765.00) \times (5\%) \times (7 \text{ months}) = \$267.75$$

I find that the tenant has not provided sufficient evidence to establish that the use of an elevator is required to comply "...with the health, safety and housing standards required by law" Accordingly, I dismiss the tenants' request for an order to repair the elevator. However, since the loss of use of the elevator is an ongoing loss of a service and facility, the tenant may deduct the sum of \$38.25 from each monthly rent payment, commencing on January 1, 2020, pursuant to section 65(1)(b) until the use of the elevator is restored.

(iii) *Loss of use of laundry room*

The tenant provide testimony regarding a loss of access to the laundry room even though this claim was not stated in the tenant's application. Residential Tenancy Branch *Rules of Procedure* No. 2.2 states that an applicant's claims are limited to what is stated in the application. Since the tenant's application did not state a claim for compensation for loss of access to the laundry room, this claim is dismissed pursuant to *Rules of Procedure* No. 2.2.

(iv) *Aggravated damages*

Residential Tenancy Branch Policy Guideline No. 16 defines aggravated damages as follows:

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately

or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

I find that the tenant has failed to provide sufficient evidence to establish that tenants losses were caused by the intentional or negligent acts of the landlord. I find that, on the balance of probabilities, that the landlord has acted reasonably to mitigate the effect of the fire on the tenant and remediate the damage. As such, I find that the tenant has not established a claim for aggravated damages. Accordingly, I dismiss the tenant's claim for aggravated damages.

(v) *Claim for expenses relating to the fire*

I find that the tenant has failed to provide sufficient evidence to establish that her transportation expense, pet expenses, hotel expenses or food expenses were incurred as a direct result of a violation by the landlord of the *Act*, regulations, or tenancy agreement as required by section 67 of the *Act*. Accordingly, this claim is dismissed.

(vi) *Request for order for landlord to comply with the Act*

I find that the tenant has failed to provide sufficient evidence to establish her claim for an order for the landlord to comply with the *Act*. I find that the actions by the landlord were, more likely than not, the result of remediation of the extraordinary fire damage and I am not satisfied that future restrictions on the landlord are required. The tenants' application for an order for the landlord to comply with the *Act* is dismissed.

Since the tenant has been partially successful in this application, I grant the tenant reimbursement of one-half of the filing fee, being \$50.00.

Accordingly, I find that the tenant is entitled to a compensation in the amount of \$853.25 calculated as follows. The tenant may satisfy this award by deducting the sum of \$835.25 one time from future rent payments.

<u>Item</u>	<u>Amount</u>
Loss of use of balcony	\$535.50
Loss of use of elevator	\$267.75
Partial reimbursement of the filing fee	\$50.00
<b>Total</b>	<b>\$853.25</b>

### Conclusion

I grant the tenant a monetary order in the amount of **\$853.25**. The tenant may satisfy this award by deducting the sum of **\$835.25** one time from future rent payments

I order the landlord to repair the tenant's balcony to a safe and habitable standard.

Until the balcony is repaired, the tenant may deduct the sum of **\$76.50** from each monthly rent payment, commencing on January 1, 2020.

Until the elevator is repaired, the tenant may deduct the sum of **\$38.25** from each monthly rent payment, commencing on January 1, 2020.

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: December 11, 2019

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Residential Tenancy Branch