



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT LRE MNDCT RP RR**

### Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- A monetary order for damages or compensation pursuant to section 67;
- An order for regular repairs to be done to the rental unit pursuant to section 32 and
- An order for a reduction of rent pursuant to sections 32 and 62.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was explored. The tenant testified he served the landlord with his Application for Dispute Resolution Proceedings Package on December 13, 2019 by registered mail. The tracking number for the mailing is listed on the cover page of this decision. The landlord testified she was away from the country for the month of January and did not receive the tenant's application. I find that the tenant complied with section 89 of the *Act* and deem he served the landlord with his application on December 18, 2019, five days after mailing in accordance with sections 89 and 90 of the *Act*.

The tenant testified he served the landlord with his amendment the same day he filed it, on January 24, 2020 by registered mail. The tracking number is listed on the cover page. This document was also not received by the landlord, however I deem the amendment served on the landlord five days after mailing, on January 29, 2020 in accordance with section 89 and 90 of the *Act*.

The landlord testified that she uploaded evidence to the Residential Tenancy Branch website on February 2 and 3, 2020 and sent a copy to the tenant by registered mail on or about February 3<sup>rd</sup>. The tenant does not acknowledge receiving the landlord's documents. Rule 3.15 of the Residential Tenancy Rules of Procedures state that the respondent's evidence must be received by the applicant and the Residential Tenancy

Branch not less than seven days before the hearing. As the landlord did not comply with Rule 3.15, the landlord's documentary evidence was excluded. The landlord's oral testimony would be considered.

#### Issue(s) to be Decided

Should the landlord be required to do repairs to the rental unit?

Is the tenant entitled to a reduction of rent for the period between the flooding of the rental unit and now?

Is the tenant entitled to an ongoing rent reduction?

Can the tenant be compensated for a new mattress?

Should the landlord's right to enter the unit be suspended?

Can the tenant recover the filing fee?

#### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Neither party provided a copy of the tenancy agreement. The tenant testified that the fixed one-year tenancy began on June 1, 2019 with rent set at \$1,400.00 per month. A security deposit of \$700.00 was collected which the landlord continues to hold. No condition inspection report was done at the commencement of the tenancy.

Sometime in September, the date cannot be recalled, either the 18<sup>th</sup> or 23<sup>rd</sup>, the tenant's unit flooded. The tenant testified he had no idea what happened, but the toilet overflowed. The tenant indicates he verbally advised the landlord that there was an issue with the toilet and that he sent a text message to the landlord to advise her of the issue. He testified he told the landlord that his toilet leaks and is constantly running. No text messages were provided by the tenant.

He went to work that day in September, came back and found the toilet flooding. He caught it in time, shut off the water supply to the toilet and notified his landlord. The tenant used a shop-vac to vacuum up the flood water however he lived in the unit for 'maybe a month' before the flooring, carpets and underlay were taken up by the restoration company hired by the landlord's insurer. The restorers didn't remove all the

damaged carpet and left molding behind after ripping up the flooring. The tenant provided photographs of the residual molding and stained carpet as evidence. Nobody has come back to replace the flooring; the tenant has been living in a rental unit with bare concrete floors since the flood. The tenant seeks a rent reduction for 50% of the rent to be returned to him for the duration of the period he has been living without flooring or a working toilet.

The toilet has not been working since the flood. The tenant says in order for it to flush, the lid must be removed from the back of the tank and the ballcock must be manually lifted to flush it. Water must be turned on and off from the source to flush the toilet.

The tenant's mattress was contaminated by the flood water and the tenant estimates it would cost around \$700.00 to replace it. The tenant did not provide a replacement quote and he does not have proof of purchase of the original mattress but estimates it's about 3 years old and it's a King size mattress. The tenant acknowledges he did not purchase tenant insurance. He didn't think anything like this flood would happen and didn't know he should have bought it. He states that next time, he will purchase tenant insurance.

The landlord called a witness BL to testify. The witness provided the following testimony. She's a realtor who had listed the rental unit for sale, but on the landlord's instructions took it off the market so the landlord could rent it out. On September 12<sup>th</sup>, the tenant told the tenant that he had flooded the unit. The landlord, the witness, and a certified plumber referred by the witness came to inspect the damage. The witness testified that when they came, the tenant was upset the landlord brought a plumber to the unit to inspect as the tenant himself was a plumber. The plumber fixed the toilet. The witness recounts that the tenant told her he used the toilet that day to 'poop' and went to work. The witness testified the tenant was uncooperative when the landlord came to investigate the flooding and threw them out aggressively. The tenant told her he was a plumber and he could fix the toilet himself.

The tenant rebuffed the witness' statement saying that the landlord and the witness were friends, and the landlord, the witness and the hired plumber 'ganged up' on him the night of the flood.

The landlord provided the following testimony. The tenant moved in 5 days earlier than the commencement of the tenancy, on May 24, 2019. Since moving in, the tenant has asked the landlord to hire him to do plumbing repairs to the rental unit which she has declined. The tenant has demanded extra keys, key fobs and a visitor parking pass

from her. The tenant has caused the landlord to have fines levied against her unit. The landlord contends that her refusal to give the tenant extra parking passes led to the tenant's decision to purposely cause the flood to the rental unit by doing damage to the toilet.

The landlord states when the flood happened, she didn't specifically blame the tenant although she suspected him of doing the damage on purpose. She advised him that she would give him his security deposit back if he were to move out which he wouldn't do. The landlord claims the tenant asked her for compensation for moving out.

The restoration company hired by her insurer advised her the tenant was being uncooperative in repairing the damage from the flood. They couldn't refloor it until the unit was vacant, but the repairs are covered by insurance. The landlord did not call a representative of the restoration company as a witness or provide a written statement.

The tenant testified the landlord never reached out to him to coordinate a date for the restoration to happen. He has always been willing to accommodate the restoration company team coming in to bring the apartment back to the state it was at the beginning of the tenancy. He does not need 24 hours notice for them to do the work, he would be able to provide access to the workers easily as he works across the street from the rental unit.

### Analysis

No evidence was led by the tenant regarding his application for to suspend or set conditions on the landlord's right to enter the rental unit. As Rule 7.4 of the Residential Tenancy Rules of Procedure require the applicant to present evidence to support their claim, this portion of the tenant's claim is dismissed.

The following sections of the *Act* are relevant to this decision.

### **32 Landlord and tenant obligations to repair and maintain**

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

### **7 Liability for not complying with this *Act* or a tenancy agreement**

If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

**65 Director's orders: breach of *Act*, regulations or tenancy agreement**

- (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make any of the following orders:
- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

**67 Director's orders: compensation for damage or loss**

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The parties are in agreement that a flood happened in the rental unit in September of 2019 and the landlord has testified that her insurer will repair the damage caused by the flood. The landlord has been in a position to do the remediation or repairs since as early as one month after the incident took place and has yet to do so. The landlord submits that the remediation company requires a vacant suite to perform the repairs, but I find she has provided insufficient evidence to support this stance. No report from a company tradesperson was presented as evidence or witnesses with the expertise to make this statement were called.

The landlord also claims that the tenant would not allow the tradespeople into the rental unit to perform the remediation. I find the landlord has also failed to provide sufficient evidence to support this. The photographs provided by the tenant indicate he has been living with construction debris and remnants of a toilet flood for many months and it would be unreasonable to accept that the tenant would not want to have this fixed immediately.

Given these findings, I find the landlord in violation of section 32 of the *Act* in failing to provide or maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, suitable for occupation by a tenant. I order that the landlord repair the damage done to the rental unit from the flood, including but not limited to installing carpeting and flooring suitable for occupation by the tenant. The landlord is to ensure the toilet is in working order, suitable for regular use by the tenant. The landlord is to have the remediation done forthwith in accordance with section 32.

To encourage the landlord to have the repairs done in a timely manner, I order that the tenant is to pay rent reduced by \$400.00 per month, in the amount of \$1,000.00 per month until the repairs are done pursuant to section 65 of the *Act*, commencing the next period when rent becomes due.

Although the landlord claims the flood was intentional, she has not provided sufficient evidence to support this theory. I find that, on a balance of probabilities, the flood was simply an unforeseeable accident. The tenant claims the rental unit has been left in a less desirable state since the flooding and that the landlord should compensate him for 3 months of rent at 50% as damages. Turning back to the 4 point test, the tenant must be able to satisfy me that all 4 conditions of the 4 point test have been met in order for me to award compensation.

While it is clear to me that the tenant did suffer from a less desirable rental unit following the flood, I find that he failed to mitigate his damages by failing to purchase tenant insurance. Tenant insurance would have provided him with alternate living arrangements while the rental unit was being remediated. As such, his claim for damages would be greatly decreased or might not exist at all. As the tenant has failed to show he took the steps to mitigate his loss, he has not satisfied me he should be entitled to compensation. The tenant's claim for rent reduction at 50% for 3 months is dismissed.

Lastly, the tenant seeks a replacement mattress for the one damaged by the flood. The tenant did not provide sufficient evidence to show the value of the mattress, namely it's brand, quality, age or place of purchase. Nor did he supply me with any documentation to indicate what a suitable replacement would cost. Point 3 of the 4 point test has not been satisfied. Further, the I find it altogether likely that the tenant's insurer would have compensated him for a replacement mattress if it had been damaged by an accidental flood from the toilet. Once again, the tenant has failed to mitigate his damages. For these reasons, this portion of the tenant's claim is dismissed.

The decision to award the filing fee is discretionary upon the arbitrator and I award it to the tenant. Pursuant to section 72 of the *Act*, I allow the tenant to deduct a further \$100.00 from the next single rent payment due to the landlord.

### Conclusion

I order that the landlord repair the damage done to the rental unit from the flood, including but not limited to installing carpeting and flooring suitable for occupation by the tenant. The landlord is to ensure the toilet is in working order, suitable for regular use by the tenant. The landlord is to have the remediation done forthwith in accordance with section 32.

To encourage the landlord to have the repairs done in a timely manner, I order that the tenant is to pay rent reduced by \$400.00 per month, in the amount of \$1,000.00 per month until the repairs are done pursuant to section 65 of the *Act*, commencing the next period when rent becomes due.

Pursuant to section 72 of the *Act*, I allow the tenant to deduct a further \$100.00 from the next single rent payment due to the landlord.

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: February 10, 2020

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Residential Tenancy Branch