



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RP, PSF, MNDCT, FFT

### Introduction

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

- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord GSS ("landlord") and "landlord SM," the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that both agents were property managers and had permission to speak on behalf of the "landlord owner" named in this application. The tenant confirmed that her advocate had permission to speak on her behalf. This hearing lasted approximately 63 minutes. The tenant spoke for most of the hearing time at approximately 40 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package. The tenant confirmed that she suffered no prejudice and had no objection to me considering the landlord's evidence package at the hearing or in my decision, despite receiving it late, less than 7 days before this hearing, contrary to Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*.

### Issues

Is the tenant entitled to an order requiring the landlord to complete repairs to the rental unit?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

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

### Background and Evidence

Both parties agreed to the following facts. This month-to-month tenancy began on March 1, 2018. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A written tenancy agreement was not signed, only a verbal agreement was reached. No security or pet damage deposits were paid by the tenant to the landlord. The tenant continues to reside in the rental unit.

The tenant confirmed that she and the landlord owner attended a previous hearing on September 11, 2018, after which a decision, dated September 12, 2018, was issued by a different Arbitrator, ordering repairs and dismissing the tenant's monetary application with leave to reapply. The file number for that hearing appears on the front page of this decision. The tenant provided a copy of the previous hearing decision.

The tenant seeks for the landlord to replace the roof at the rental property. The landlord agreed to do so when the weather is better, in approximately six weeks.

The tenant seeks for the landlord to repair the flickering electricity at the rental unit. The landlord agreed to inspect the issue on February 24, 2020, and to repair the issue within a week, if recommended by a certified, licensed electrician.

The tenant seeks for the landlord replace the windows, stating that they do not open due to swelling, and she broke three ribs trying to open them. The landlord agreed to inspect the issue on February 24, 2020, and to potentially replace the windows if recommended by a certified, licensed professional.

The tenant seeks for the landlord to install a fan above the stove that is vented to the outside. The landlord agreed to install a fan above the stove that is vented to a charcoal filter, as this is to code, not the venting to the outside. The landlord agreed to install within a week. The tenant agreed that she did not know the code requirements.

The tenant seeks the repair of perimeter drains in order to deal with water leaking everywhere. The landlord confirmed that he had two invoices from certified, licensed professionals who dug up a corner and cleaned out the roots, in order to unblock the perimeter drains. The landlord agreed to provide these invoices to the tenant by February 24, 2020. The landlord maintained that the professional recommended cleaning the roots each winter in order to prevent blockage of the drains, since the drains were older, and roots were growing. The landlord stated that there was no drain backup, the perimeter drains were draining water, and there had been no rain recently.

The tenant seeks \$1,755.00 from the landlord for damaged personal possessions, due to the sewer backup in the basement. The landlord agreed to pay this amount to the tenant, during the hearing.

The tenant seeks \$28,245.00 for aggravated damages from the landlord. In her monetary order worksheet, the tenant stated that the landlord acted in bad faith, he did not comply with the previous RTB hearing order in September 2018 for repairs, the tenant had to manage her own emergency repairs during this entire tenancy, and the tenant suffered mental and physical health issues, due to the mold, bacteria, toxic/caustic substances, and unsafe premises. The tenant stated that since the beginning of the tenancy, she noticed a smell that the landlord owner could not smell and was unable to fix. She said that the landlord owner has tried to evict her previously, acting as if his daughter would be moving in, when she was really looking for another property. The tenant provided copies of previous RTB hearing decisions. She confirmed that she offered to leave the rental unit if the landlord owner agreed to pay her moving expenses, but he refused telling her it was extortion.

The tenant read from her medical records, stating that her doctors cautioned her against providing them to the landlord owner, due to confidentiality. The tenant referenced her doctor's notes during the hearing. The tenant maintained that the landlord owner gossiped about her to everyone in town, he owned a number of properties, and she may have to leave town if she moves. She explained that there was nowhere to move to at this time, and the landlord owner will not pay for her moving expenses. The tenant confirmed that the landlord owner has hired "thugs" to come after her, has posed as a property manager lurking around her rental unit, has chased her and hid from her

outside, and has peered through her windows. She said that she is a single woman, on long-term disability, she has post-traumatic stress disorder, high anxiety, and depression, and she told the landlord that she required a quiet, low stress tenancy, and she would take care of his rental unit. She stated that the landlord has caused her a lot of stress and exacerbated her medical conditions.

The landlord disputes the tenant's monetary application of \$28,245.00 for aggravated damages. He stated that this was a very high amount. He maintained that the tenant used safety equipment, so he questioned how she suffered damages. He confirmed that the landlord owner was not good at communication. The landlord stated that he was making best efforts as the property manager, since being hired as of January 28, 2020. He said that he was trying to do repairs for the tenant, but she had interfered with previous repairs by bothering the electrician while he was working and sitting on the toilet while repairs were being done in her bathroom. The tenant denied interfering with any repairs.

### Analysis

#### Repairs and Services/Facilities

I order the landlord to have a certified, licensed professional replace the roof at the rental unit when the weather is better, in approximately six weeks of February 24, 2020.

I order the landlord to inspect the flickering electricity at the rental unit by February 24, 2020 and to repair the issue, if recommended by a certified, licensed electrician, by March 3, 2020.

I order the landlord to inspect the windows that do not open at the rental unit by February 24, 2020, and to replace them, if recommended by a certified, licensed professional, by March 3, 2020.

I order the landlord to install a fan above the stove that is vented to a charcoal filter, as per code, at the rental unit by March 3, 2020.

I order the landlord to provide the two invoices for the perimeter drains cleaning to the tenant by February 24, 2020.

I order the landlord to inspect the perimeter drains at the rental unit by March 3, 2020 and to repair any drain blockage at the perimeter drains to prevent water leaks, if recommended by a certified, licensed professional, by March 15, 2020.

I order the landlord to maintain ongoing perimeter drains cleaning to prevent drain blockage and water leaks at the rental unit.

I order the landlord to repair any blockage or leaks of the perimeter drains at the rental unit, within a reasonable period of time, once notice is provided by the tenant.

I order the tenant to provide access to the landlord to perform the above inspections and repairs, provided that the landlord first gives written notice to the tenant, prior to any inspections and repairs, in accordance with section 29 of the *Act*. The tenant is not required to be present during any inspections or repairs. The landlord is not required to give written notice for any inspections on February 24, 2020, as the tenant verbally agreed to these inspections during this hearing.

#### Monetary Claim

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the tenant \$1,755.00 for damages to her personal possessions, due to a sewer backup in the basement at the rental unit. The landlord agreed to pay this amount during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the tenant's monetary application for aggravated damages of \$28,245.00, without leave to reapply.

I find that the tenant was unable to provide a breakdown or justify the \$28,245.00 being claimed. The tenant spoke for the majority of the hearing time, as opposed to the landlord. The tenant listed a number of problems with the landlord. She read from medical records that she did not provide for this hearing, stating that her doctor told her not to provide them. She discussed issues regarding harassment and the landlord gossiping about her in town. Yet, I find that the tenant was unable to show that she suffered losses or damages, with a monetary value, as a result of the landlord's behavior. The tenant provided a number of documents for this hearing, including photographs and previous RTB hearing decisions. However, I find that she failed to go through these documents in an organized and concise manner.

As the tenant was only successful where the landlord agreed to perform repairs or provide compensation, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I order the landlord to complete the above inspections and repairs at the rental unit by the above dates. I order the tenant to provide access as per the above instructions. I order both parties to comply with section 29 of the *Act*.

I issue a monetary order in the tenant's favour in the amount of \$1,755.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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 24, 2020

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Residential Tenancy Branch