



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, OLC, FFT

### Introduction

On March 20, 2020, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- for an order for the Landlord to make repairs to the rental unit.
- For the Landlord to comply with the Act, Regulation or tenancy agreement.
- to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Tenants and the Landlord were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Issues to be Decided

- Are the Tenants entitled to an order that the Landlord make repairs to the rental unit?
- Are the Tenants entitled to an order that the Landlord comply with the Act, Regulation or tenancy agreement?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenants testified that the tenancy began on July 1, 2019 as a one-year fixed term tenancy to continue until June 30, 2020. Rent in the amount of \$1,850.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$925.00 and a pet damage deposit of \$925.00.

### Repairs

The Tenants testified that all the windows in the rental unit need to be replaced or re-sealed due to an issue with heat loss. The Tenants testified that there is excessive condensation on the windows which creates an environment for mold growth. The Tenants testified that there is more condensation on the windows in the winter which attracts mold growth. The Tenant testified that he cleaned the mold on one occasion. The Tenants provided two undated photographs of windows which show condensation and grime.

The Tenants testified that the house was built in 1984 and has single pane windows. The Tenants testified that all the other homes on the street have had their windows upgraded.

The Tenants testified that in addition to heat loss which affects their hydro costs, one Tenant has noticed a sore throat since September 2019 and worries it is connected to mold growth.

The Tenants documentary evidence contains an email sent to the Landlord which contains the following text:

*"We know that this house is not meeting health, safety and housing standards by law for the windows alone..."*

The Tenants testified that in January 2020 they asked the Landlord to make repairs to the windows. The Tenants testified that the Landlord had someone come look at the windows in January and again in February. The Tenants testified that repairs have not been made.

The Tenants are wanting the Landlord to replace or re-seal all the windows.

In response, the Landlord provided testimony acknowledging that the Tenants told him the windows need repair. The Landlord testified that the rental house is old and was built in 1984. He testified that the home has the original single pane windows. The Landlord testified that the monthly rent is low to reflect the age and condition of the

rental unit. The Landlord testified that the Tenants knew the house was old when they rented it. The Landlord provided five photographs of the windows which show the windows in a reasonable state of repair.

The Landlord testified that the previous Tenant who occupied the unit lived there without issue. The Landlord provided a letter from the previous tenant which provides that cleaning the windows alleviated any condensation concerns.

The Landlord testified that he had a company look at the windows and it will cost more than \$10,000.00 for him to replace the windows. The Landlord testified that he cannot afford to replace the windows at this time. The Landlord agreed he would repair or seal any windows that need repair or are leaking.

#### Landscaping/ Property Maintenance

The Tenants want the Landlord to comply with an agreement reached in May 2019 at the start of the tenancy that the Landlord would landscape the property. The Tenants testified that 80% of the property contains weeds and there is an old swing and metal objects throughout the yard. The Tenants provided 13 photographs showing the condition of the yard.

The Tenants testified that they asked the Landlord in March 2020 to do the landscaping and the Landlord replied that he would get it done. The Tenants testified that the Landlord offered to pay the Tenants if they performed the work.

The Tenants testified that the Landlord started working on the landscaping in April 2020; however, the work is not complete. The Tenants want the Landlord to comply with the agreement to have the yard work completed.

In reply, the Landlord provided testimony confirming that the parties reached a verbal agreement that the Landlord would clean up the yard. The Landlord testified that the previous Tenant left the yard unclean.

The Landlord testified that he was busy dealing with a family matter but has been working on getting it done. The Landlord testified that he needs another month to complete the work.

#### Analysis

Section 32 of the Act provides that 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.*

Residential Tenancy Branch Policy Guideline # 1 Landlord & Tenant – Responsibility for Residential Premises provides that the Landlord is responsible for ensuring that rental units and property, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The Guideline also provides:

- 1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair.*
- 2. The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.*

Based on the evidence and testimony from the Tenants and Landlord, and on a balance of probabilities, I make the following findings:

#### Window Repair

I accept the evidence that windows are 34 years old and are single pane windows. I accept the evidence that the windows are prone to condensation in the colder months.

While I acknowledge that the Tenants feel that the windows do not meet health, safety and housing standards, I find that the Tenants provided insufficient evidence on health, safety, and housing standards and that the windows do not meet standards.

The Act requires the Landlord 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 with regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the age of the home and windows in itself does not require the Landlord to upgrade the windows to a higher standard or more efficient standard than was present when the home was built. The Tenants should have considered that the windows in the

rental unit are single pane before they entered into the tenancy agreement and agreed to pay a portion of hearing costs. I find that the Landlord is not required to replace the windows.

After considering the evidence before me I find that the windows are in a reasonable state of repair suitable for occupation by a tenant.

The Tenants request for an order that the Landlord make repairs to the windows is denied.

#### Landscaping/ Yard Maintenance

I find that the parties entered into an oral agreement at the start of the tenancy that the Landlord would clean up and landscape the Tenant's yard on the rental property. I find that the agreement is an enforceable term of the contract and the Landlord is obligated to complete the work.

I accept the testimony that the Landlord has started the work, but the work is not complete. Since the winter season ended in mid March, I find that there is nothing preventing the Landlord from completing the work. I accept the Landlord's testimony that he requires one month to complete the remaining work.

I order the Landlord to have the yard work completed by June 15, 2020.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were partially successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to deduct the amount of \$100.00 from one (1) future rent payment.

#### Conclusion

The Tenants request for a repair order related to window repair or replacement is not successful and is dismissed.

The Tenants request for the Landlord to comply with a term of tenancy related to property maintenance is successful. I order the Landlord to complete the yard work no later than June 15, 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: May 13, 2020

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Residential Tenancy Branch