



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      RP, RR, FF-T

### **Introduction**

The tenants apply for a repair order and for a rent rebate and reduction due to the state of the unrepaired premises. They seek recover of their security deposit as well as recovery of the filing fee.

The respondent landlord did not attend for the hearing within 50 minutes after its scheduled start time at 9:30 a.m. on August 6, 2020. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the tenants and this arbitrator were the only ones who had called into this teleconference during that period.

The tenants show that the respondent landlord was served with this application by registered mail. The tenancy agreement, created in 2016, gave the landlord's address as a management company but that company ceased to manage the property within about a year after the tenancy started. The landlord did not provide a new address for herself after that.

The tenants determined the landlord's address by inquiring of their neighbour in this duplex, who has an arrangement with the welfare office to pay his rent directly to the same landlord. They also note that last November, in their first dispute hearing with this landlord (file number shown on cover page of this decision) that address was shown for the attending landlord without dispute or amendment.

Canada Post records (tracking number on cover page of this decision) show that the registered mail to the landlord at this address was in fact "delivered".

On this evidence I find that the landlord has been duly served with the application.

Issue(s) to be Decided

The question of a repair order is redundant. In the November 2019 proceeding the tenants obtained a detailed repair order for the deficiencies in question.

In the circumstances outlined below, are the tenants entitled to a rent reduction and rebate? If so, what is an appropriate reduction? Can they have their security deposit back though they continue as tenants?

Background and Evidence

The rental unit is a five-bedroom side of a duplex. There is a written tenancy agreement. The tenancy started in January 2016. Currently the monthly rent is \$1350.00, due on the first of each month. The landlord holds \$675.00 security deposit.

At the November 2019 hearing the arbitrator granted a repair order in the following terms:

The Landlord is ordered to have the following repair completed by certified roofing professionals no later than December 15, 2019:

- The roof secured with a tarp or other means that would prevent leaking until the roof repair/replacement can be completed.

The Landlord is ordered to have the following repairs assessed and completed by a certified remediation company no later than December 30, 2019:

- The damage from any areas of water leaking inside the rental unit, including possible presence of mould

The Landlord is ordered to have the following repairs completed by a certified professional plumber and other professionals as required no later than December 30, 2019:

- The cracked bathroom tile to be replaced.
- Bathtub leak and resulting damage to be assessed and repaired.

The Landlord is also ordered to have the roof repair or replacement completed by certified roofing professionals no later than February 29, 2020.

The tenants testify that none of this work has been done. Indeed, the landlord has not contacted them about any of this work nor about anything else since the November hearing. It is apparent from the record of that hearing that she attended and was sent a copy of the decision by the Residential Tenancy Branch.

That repair order is still in effect. There is no need to issue another one for the same repairs.

When landlords fail or refuse to conduct mandated repairs it is sometimes feasible to have the tenants obtain quotes for the needed work and to authorize them to withhold rent in order to pay for the work directly. I consider that course to be unfeasible in this circumstance. The repairs ordered would appear to be of considerable cost and would likely take many months of future rent to pay for and there is no guarantee the tenants will remain tenants of this rental unit for that time.

Regarding the tenants' request for a rent reduction and rebate, they testified about the nature of the deficiencies needing repair and the effect those deficiencies had on their use and enjoyment of the rental unit.

Regarding the roof itself, shingles have been flying off of it for some time. Perhaps 200 shingles have been blown to the ground, leaving bare spots of the roof. A temporary tarp put on years ago and later, clear plastic sheeting, quickly flew off or disintegrated.

When it rains water pools above the ceiling in the tenants' living room and drips through the ceiling in four or five places onto the drapes covering the front window. The dripping locations change from time to time. The ceiling is marred by water stains.

In the master bedroom water drips on the windowsill and runs down the inside of the wall. A "stream" of water has been observed coming from the ceiling.

In the bathroom there is cracked tile above the tub. The wall behind the tile has been softened by water damage and can be pushed in. The upper bathroom tub leaks into the bathroom below and the ceiling in the lower bathroom has now collapsed. One cannot use the lower toilet without being dripped on while the upstairs tub is in use.

There is observable mould in the ceiling of the lower bathroom and the upper. Mushroom like growth is occurring on the upstairs bathroom floor near the tub.

### Analysis

The circumstances justify at significant reduction of the tenants' rent. They suffer very significant disruption when it rains and inconvenience in the use of the lower bathroom when the upper tub is in use. As well they are faced with the worry associated with observable mould and perhaps fungal growth on the interior of the home in which they live.

The tenants indicated in their materials that two of the bedrooms are not useable. This was not explained at hearing and so I do not consider it as a ground for rent reduction.

In all the circumstances I consider at 30% reduction of rent to be a reasonable assessment of the loss of use and amenity they are suffering due to the landlord's failure maintain the premises in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant (as she is required to do by s. 32 of the *Residential Tenancy Act* (the "RTA").

The tenants have requested the rent reduction be made retroactive for years of their tenancy, I deny that request. A monetary claim, either directly or by way of a retroactive rent reduction should have been made at the November hearing. The tenants say they did not do so because they were "being nice." In my view they are to be held to that decision. I direct that the rent reduction awarded in this matter run from December 1, 2019.

The tenants have requested recovery of filing fees for two applications they made against the landlord but which were both dismissed for what appears to be a failure to prove service on her. The awarding of the recover of those fees were for the arbitrators of those hearings to make and I dismiss this item of the tenants' application.

The tenants have also requested recovery of their security deposit even though this tenancy is continuing. They think the landlord will not return it after the end of the tenancy. I dismiss this item of the application. First, it is mere speculation that she will not account for the deposit money at the end of the tenancy. Second the *RTA* specifies deposit money is to be dealt with at the end of the tenancy.

Conclusion

The tenants' monthly rent is hereby reduced from \$1350.00 to \$945.00 effective September 1, 2020.

The tenants are entitled to recover 30% of the rent paid since December 1, 2019 to August 2020; a total of nine months, amounting to \$3645.00. The tenants are also entitled to recover the \$100.00 filing fee for this application.

The tenants will have a monetary order against the landlord in the amount of \$3745.00. Pursuant to s. 72 of the *RTA*, the tenants may deduct or offset the monetary award against the reduced rent as it comes due.

Should the repairs or any of them be completed by the landlord, she is free to apply to have this rent reduction cancelled or reduced.

Should the use or amenity of the rental unit deteriorate further as the result of the landlord's failure to repair or maintain the premises as required by s. 32 of the *RTA*, the tenants are free to apply for an additional rent reduction or other appropriate remedy.

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: August 06, 2020

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Residential Tenancy Branch