



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      ERP OLC RR MNDCT

### **Introduction**

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

HM appeared for the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the parties were in attendance, I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

At the outset of the hearing, the landlord confirmed that the tenants were served with a 2 Month Notice to End Tenancy, but the 2 Month Notice was cancelled. The tenant submitted a copy of the 2 Month Notice dated July 17, 2020. As the landlord confirmed that the 2 Month Notice was cancelled, the 2 Month Notice is confirmed to be formally

cancelled and is of no force or effect. The tenancy is to continue until ended in accordance with the *Act*.

### **Issues to be Decided**

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Are the tenants entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

This month-to-month tenancy began on September 1, 2017, with monthly rent currently set at \$1,000.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$500.00, which the landlord still holds. Both parties confirmed that there is no written tenancy agreement for this tenancy. The landlord confirmed that he had sold the home, and the new owners will take possession on September 18, 2020.

The tenants are seeking the following orders. The tenants submit that they had an agreement with the landlord that they could paint and perform some renovations to the rental unit, and the landlord would reimburse them. The tenant testified that they did not retain all the receipts, but that the receipts submitted total \$389.39, and the tenants are seeking reimbursement as agreed upon by both parties. The tenant submitted receipts and photos in support of their claim. The tenants confirm that this agreement was strictly verbal. The landlord testified that he had only agreed to reimburse the tenants for 1 or 2 cans of paint for painting the living room, and that he had never agreed to any of the other work performed by the tenants.

The tenants are also seeking reinstatement of their right to use the laundry facilities, and a \$50.00 rent reduction until this facility is restored. Both parties confirmed that the tenant had use of the laundry facility since the beginning of this tenancy, which ended in

August of 2020. Both parties confirmed that the tenants would send a text message to the landlord in order to use the washer and dryer, which is located in the landlord's portion of the home. The tenants submitted copies of the text messages. The tenants testified that the landlord had even allowed them the use of the washer and dryer when he was not home. The landlord testified that the use of the washer and dryer was not a part of the rental agreement, but a favour he had done for the tenants on a per use basis. Each instance required a separate request from the tenants, and he had agreed each time. The landlord testified that in August 2020 he had decided to stop allowing this privilege as the washer and dryer were located in his own home, and he no longer trusted the tenants to be in his private living space.

The tenants are also seeking an order for the landlord to address the mould issue in the home. The tenants submitted photos of the windowsills, which the tenants testified were covered in mould. Both parties confirmed that the first written request for repairs from the tenants was the letter dated August 13, 2020. The landlord testified that the mould was due to condensation as the windows in the 40 year old home were single pane. The landlord testified that he believed that the new owners may be replacing the windows when they take possession.

### **Analysis**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter " tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

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

**7** (1) *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.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenants are seeking reimbursement for the painting and renovations they have completed in the rental unit. The landlord disputes that he had ever agreed to reimbursing the tenants other than for 1 or 2 cans of paint for painting the living room. I find that the tenants failed to provide sufficient evidence to support that there was a mutual agreement between the parties, with the exception of the reimbursement of the 1 or 2 cans of paint for the living room. The tenants submitted receipts, which included the purchase of materials they used to paint the rooms. I am satisfied that the tenants did make these purchases, and painted the living room as allowed by the landlord. As I am unable to determine which cans of paint were used to paint the living room and how much paint was used, I will allow the tenants reimbursement for the 2 cans of paint, in the approximate value of \$30.00 per can for a total monetary order of \$60.00 for the paint. The remainder of their monetary claim is dismissed without leave to reapply.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**32** (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.*

The landlord testified that he was unaware of the mould issue until the tenants had failed their application. I find that the tenants did not make any written requests for repairs until August 13, 2020. I am not satisfied that the tenants had provided sufficient evidence to support that the landlord has failed to comply with the *Act* in performing repairs. As the new owners take possession on September 18, 2020, and may be replacing the single pane windows, I dismiss this portion of the tenants' application with leave to reapply.

Lastly, the tenants requested restoration of their right to use the laundry facilities, as well as a rent reduction of \$50.00 for the loss of this facility. Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows. It is undisputed by both parties that the tenants had the use of the washer and dryer since the beginning the tenancy. The tenants would make a request by text message, and the landlord would give permission and access on a per use basis. The tenants' testimony was that the ongoing use of this facility implied that this was an included facility under the tenancy agreement. The landlord responded that the tenants had to ask permission on each occasion, as this facility was in his own home, and was not included in the tenancy agreement. The landlord testified that he had allowed the tenants to use his washer and dryer as a favour, and not as an obligation or agreed upon facility.

In consideration of the tenants' right to use the washer and dryer, and whether this was an included facility in the absence of a written tenancy agreement, I have considered whether the landlord had implied his consent to the ongoing use of this facility. Allowing the tenants the use of the facility on multiple occasions could possibly imply the landlord's consent and inclusion of this facility as part of the tenancy agreement.

In this case, I find it undisputed by both parties that despite the fact that the tenants had used the laundry facilities since the beginning of this tenancy, the facility was located in the landlord's portion of the home, and permission was granted on a per-use basis. I find that it was clear to both parties that the tenants did not have use of this facility without the express permission of the landlord on each occasion, as supported by their

own evidentiary materials. I am not satisfied that the tenants had provided sufficient evidence to support that the laundry facilities were an included facility as part of the tenancy agreement, whether explicit or implied. I find that the landlord retained the right to deny or grant the use of this facility at his discretion after considering the request by the tenants. Accordingly, I dismiss the tenants' application for an order allowing them to use the laundry facilities, and for a rent reduction, without leave to reapply.

### **Conclusion**

I issue a monetary award in the tenants' favour in the amount of \$60.00. The tenants are provided with a Monetary Order in the amount of \$60.00, and 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 tenants' application for emergency repairs is dismissed with leave to reapply.

The remainder of the tenants' 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: September 9, 2020

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Residential Tenancy Branch