



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** RP, MNDCT, OLC, FFT

## **Introduction**

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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 repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

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*.

## **Issues**

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

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

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

### **Background and Evidence**

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.

This month-to-month tenancy began on November 1, 2018. Monthly rent was set at \$1,500.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$750.00, which the landlord still holds. A hearing was held on July 27, 2020, after which the tenants were awarded a \$50.00 per month rent reduction for each month the landlord is unable to accommodate the storage of the tenants' trailer in the driveway of the rental property.

The Arbitrator, in the decision dated July 27, 2020, also ordered that both parties *"comply with section 29 of the Act, which requires the landlord to provide written notice prior to entering the rental unit and requires the tenants to provide access to the rental unit once that notice is given, whether or not they are present. I also order both parties to comply with the governmental health and safety regulations regarding the covid-19 pandemic, that are currently required to be followed."*

Both parties were before another Arbitrator at a hearing held on May 12, 2020 to deal with the tenants' application for repairs as well as their monetary claims. The hearing resulted in a settlement between both parties where both parties agreed to the following:

- 1. The landlord will replace all the windows in the unit except for the bay window in the living room ("the windows") on or before October 31, 2020;*
- 2. The landlord will measure the windows in the unit at 5:00 PM on May 14, 2020;*
- 3. The tenants may reduce the rent payable June 1, 2020 by \$425.00 on a one-time basis only;*
- 4. The landlord will repair a leaking pipe in the unit within 30 days of the end of the State of Emergency or at such other time as the parties may agree.*

It is undisputed by the landlord that he did not complete the work as agreed on in Condition 1 of the settlement agreement, as outlined above, until November 4, 2020. The landlord cited health problems as the main reason for the delay.

The tenants highlighted several issues that were outstanding, and wanted addressed by the landlord. Although the windows were replaced by November 4, 2020, the tenants testified that they still feel a significant draft. The tenants believe that the installation was not done properly, and that there may be an insulation issue. The tenants also pointed out that the landlord caused damage during the installation, which was not repaired afterwards. The tenants testified that the landlord would rely on different tactics to delay and avoid completing repairs and address outstanding issues, and are concerned about the landlord's willingness to complete the outstanding repairs, including the unfinished roofing and paint job for the house. The tenants expressed frustration with the incompleteness of the repairs, including a significant draft in the home, damage caused during the window installation, and the landlord's decision to replace two windows that originally had opened with windows that no longer have that function.

The following remedies were requested:

- 1) The tenants filed a monetary claim for a rent reduction of \$46.77 per day for the period of November 1, 2020 through to November 4, 2020 in compensation for the failure of the landlord to comply with Condition 1 of the agreement.
- 2) The tenants requested an order for the landlord to repair the damage caused during the window installation and address the issues with the insulation by February 28, 2021.
- 3) The tenants requested a rent reduction of \$46.77 per day from November 7, 2020 (the date the landlord was served with the evidence package) until the landlord has repaired the damage and addressed the insulation issue as noted above.
- 4) The tenants requested that the landlord complete the repairs to the roof and gable, and finish painting the house by April 30, 2021.
- 5) The tenants requested that the landlord replace the two windows that no longer open with windows that do by April 30, 2021. If the landlord is unable to do so, the tenants request a \$100.00 per month rent reduction.

The landlord responded that he was not made aware of some the damage caused during the installation until the tenants had filed their application. The landlord testified that he was willing to address these repairs. The landlord disputes the tenants' claim that the window installation was not done properly, and states that due to the age and

character of the home, there may be a draft. The landlord testified that he is a retired journeyman, and that the window replacement was done properly.

The landlord agreed that the repairs to the roof, gable, and the painting remain outstanding, but cannot be completed until the spring due to the weather.

The landlord disputes the tenants' claims that he had drastically altered or removed a facility when replacing the two windows that once opened. The landlord testified that the window replacement still complied with building code, and that each room has a window with egress, as well as a door. The landlord testified that the dining and kitchen windows still open, and that there is not requirement that he install the same window.

### **Analysis**

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.*

I find that landlord had entered into a binding agreement on May 12, 2020 that the windows would be replaced on or before October 31, 2020. Despite the explanations for the delay, I do not find that these reasons justified or relieved the landlord of his obligations under the agreement. I do not find that the landlord had applied for, or was in possession of, an order by an Arbitrator relieving him of this agreement. As the landlord did not complete the window replacement until November 4, 2020, I allow the tenants' monetary claim of \$46.77 per day for the period of November 1 through to November 4, 2020 to be reasonable. Accordingly, I allow the tenants' monetary claim in the amount of \$187.08 for the landlord's failure to complete the window replacement by October 31, 2020.

I have noted the tenants' concerns about whether the window replacement was done properly, and the draft that they feel in the home. In consideration of the evidence and testimony before me, I accept the landlord's testimony that the home is old. Although

the tenants believe that the draft is due to issues with the replacement of the windows, I do not find that this belief is supported in evidence, whether that be testimony or a report by an expert or similar evidence of that nature. I find that the tenants failed to provide sufficient evidence to support that the draft is associated with the landlord's contravention of the *Act*. As the tenants bear the burden of proof in supporting their claims, the tenants' application in relation to the draft and insulation issues is dismissed without leave to reapply.

As the landlord agreed to address the outstanding repairs related to the damage caused during the window replacement, I allow the tenants' application for the landlord to complete these repairs. I note that the tenants have requested a deadline of February 28, 2021. As this decision will not be received within two weeks of that date, I amend the deadline to allow the landlord ample time to respond to this order. I order that the landlord complete the repairs to the damage caused during the window replacement by March 15, 2021. If the landlord fails to do so by this date, I allow the tenants' application for a rent reduction in the amount of \$46.77 per day beginning on March 16, 2021 until the work has been completed.

I find it undisputed that the painting and roof and gable repairs remain outstanding, and given the weather this work cannot be completed until the spring. Accordingly, I allow the tenants' application for an order that the landlord complete this work by April 30, 2021.

I have considered the tenants' claim about the two replacement windows that no longer open.

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."

Although I accept the landlord's testimony that his decision to replace the two windows still comply with building codes and although the home does still contain other windows that do open, I do find that the two replacement windows no longer offer the same function to the tenants as the old windows that opened.

I find the *Act* clearly states that on termination of a service or facility the appropriate remedial rent reduction amount should be "equivalent" to *the reduction in the value of the tenancy agreement*. I find that the requisite calculation prescribed in 27(2)(b) is one predicated on the question of, "what is the reduction in the *value* of the tenancy

agreement resulting from the absence of the facility”? Or, “by what amount is the *value* of the tenancy agreement (rent) reduced in absence of facility”?

I have considered the *Act* definitions of, “**rent**”, “**service or facility**”, and “**tenancy agreement**”, all of which I find comprises the totality of the tenancy agreement. I find that the landlord made a decision to replace the two windows with windows that no longer offer the same function, and as a result the tenants have experienced a reduction in a the value of the tenancy agreement. Accordingly, I allow the tenants’ application for the landlord to replace these two windows with windows that open. I order that this be completed by April 30, 2021. If that is not possible, I find compensation for the lost of this facility to be reasonable.

On preponderance of the evidence and the totality of factors comprising a *tenancy agreement* I find that a rent reduction of \$50.00 per month commencing May 1, 2021 reasonably represents the reduction in the *value of the tenancy agreement* resulting from the reduction of two windows that no longer open. Although the tenants requested a rent reduction of \$100.00 per month, I find that this reduction to have the greatest impact during the warmer months of the year. I do not feel that a \$100.00 rent reduction accurately reflects the true value of the reduction, and accordingly, I order the rent reduction of \$50.00 as set out above if the landlord is unable to replace these two windows.

I allow the tenants to recover the filing fee for this application.

In order to implement the monetary awards granted in this application, I order the tenants to reduce their future monthly rent payments by these amounts until the amounts are paid.

## **Conclusion**

I order that the landlord and undertake and complete repairs as required by section 32 of the *Act* and as ordered in this decision.

In the event that the landlord is unable to fulfill his obligations and the orders granted in this decision, I order that the rent reductions be applied until the work has been completed, specifically a rent reduction in the amount of \$46.77 per day beginning on March 16, 2021 until the repairs of the damage caused during the window replacement have been completed, and a rent reduction of \$50.00 per month commencing May 1, 2021 if the two windows are not replaced with windows that open.

The tenants' application in relation to the insulation and draft is dismissed without leave to reapply.

I allow the tenants to recover the filing fee for this application.

In order to implement the monetary awards granted in this application, I order the tenants to reduce their future monthly rent payments by these corresponding amounts until the amounts are paid.

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 18, 2021

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Residential Tenancy Branch