



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mary Street Apartments Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, OLC, RP, LRE

### Introduction

This hearing was scheduled to deal with the tenant's application for repair orders, orders for compliance, and orders to suspend or set conditions on the landlord's restricted right to enter the rental unit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of the hearing materials upon each other.

The tenant had named the corporate landlord and the individual property manager as landlords in filing this Application for Dispute Resolution. The tenant testified that she sent the proceeding package to the property manager via registered mail on January 6, 2021 and it was refused by the recipient. The tenant testified that she sent the evidence package to the property manager on January 25, 2021, via registered mail, and it was returned unclaimed by the property manager. On February 12, 2021 the tenant sent the proceeding package and evidence to the corporate landlord and that package was successfully delivered.

The property manager stated that is an employee of the corporate landlord and he had used his former address in preparing Notices of Rent Increase sent to the tenant; however, that address is no longer his residence since October 2020 but the property manager failed to notify the tenant of this. The property manager confirmed that the address the tenant used to send the hearing materials to the corporate landlord is the address the tenant should use to send mail to the landlord. The property manager confirmed that the corporate landlord received the tenant's proceeding materials and forwarded them to him to deal with. The property manager confirmed that he was

prepared to proceed. As such, I deemed the named landlords sufficiently served in accordance with the authority afforded me under section 71 of the Act and I proceeded to hear this case.

I noted that the tenant had identified a number of issues in filing her Application for Dispute Resolution and I instructed the tenant to start with the most urgent or important since we had limited hearing time. The tenant also indicated that some of the issues she identified on her Application for Dispute Resolution had since been resolved. Accordingly, this decision only reflects the issues identified at the hearing.

#### Issue(s) to be Decided

1. Is it necessary and appropriate to issue repair orders, or any other orders, to either party?
2. Award of the filing fee.

#### Background and Evidence

The tenancy started in September 2010 and the tenant paid a security deposit of \$275.00. Rent was originally set at \$550.00, payable on the first day of every month. Currently, the tenant is required to pay rent in the amount of \$665.00 per month.

The tenant identified excessive moisture forming on the windows and hall closet as the primary issues to resolve.

The tenant testified that the excessive moisture accumulates and runs down the windows. The tenant puts towels and newspaper at the bottom of the windows in an attempt to absorb the water but the rug has become wet and moldy. More recently, the tenant noticed mould on the bottom of the baseboards. Water also pools on the floor in the closet. The tenant submitted that she has notified the landlord of these issues.

The property manager testified that the windows were re-caulked last fall in an effort to address any moisture ingress around the windows; however, the landlord is of the position the problem is the result of the insufficient ventilation and air circulation. The property manager stated that he was informed by the maintenance person that the tenant is not using the humidity control to remove moist air from the rental unit or opening the windows. As for the closet, the landlord had a leak on the exterior of the building sealed in an effort to stop water ingress; however, the landlord is of the position

that greater air circulation into the closet may be the issue and that the closet door may need replacing to permit greater air circulation.

The tenant responded that she had been using the humidity controller but she did not know what setting to use since there is no instructions on the controller and it stopped working on March 21, 2021. The landlord was unaware the humidity controller had stopped working.

The tenant responded that there is a gap at the bottom of the closet door and the tenant is of the position she does not have the closet overfull. The tenant confirmed that the hall closet is on an exterior wall.

I also heard that the tenant has a washer/dryer in the rental unit and she has not checked the exhaust connection. The landlord was asked when the last time the ducts and exhaust fans were cleaned and he responded that he did not know.

The tenant also requested the patio door blinds be replaced since the turning mechanism no longer works. The landlord acknowledged that replacement blinds are to be installed on the patio door in the rental unit soon.

During the hearing, it was evident to me that communication between the parties is not effective. The tenant stated the landlord no longer answers the phone when she calls. The property manager stated the tenant phones to complain frequently and “threatened” to call her lawyer so her calls are left to go to voicemail. The tenant stated she would like to know what the landlord is doing to resolve the issues she raises.

### Analysis

Section 32 of the Act imposes obligations on a landlord and a tenant to repair and maintain the property, as follows:

#### **Landlord and tenant obligations to repair and maintain**

**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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Branch Policy Guideline 1 provides information and policy statements with respect to repairing and maintaining a residential property. Under the section entitled Fireplace, Chimney, Vents and Fans, it provides, in part:

3. The tenant is required to clean the screen of a vent or fan at the end of the tenancy.

4. The landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals.

It was undisputed that there is excessive moisture accumulating on the windows and in the hall closet. Having heard the moisture accumulation is worse in the colder months, I find the landlord's position that the ventilation and air circulation is insufficient to be likely. The issue to determine is the reason the ventilation and air circulation is insufficient.

I heard from both parties that there is a fan in the bathroom that turns on with a humidity controller. As such, I find this system has been operational and used properly by the tenant. The tenant stated the humidity controller stopped working recently and it appeared to me the landlord was unaware of that. Accordingly, I find it necessary and appropriate that the landlord go to the rental unit to inspect the humidity controller to determine whether it is working properly and if it not, to make the necessary repair. It is then upon the tenant to use the humidity controller properly and having heard there is no label or instruction on the controller, I find it appropriate for the landlord to provide the proper instruction to the tenant.

Also of consideration is that in order for excessive moisture to be effectively removed from the rental unit, the exhaust fans and ducts must be functional and clear of debris.

Since the landlord was unaware as to the last time the ducts or vents were cleaned, I find it appropriate to order the landlord to inspect and clean the ducts that take air out of the rental unit including: the kitchen exhaust fan and ducting (if the rental unit so equipped), the bathroom exhaust fan and ducting, and the dryer exhaust ducting.

To ensure air is effectively removed from the rental unit through the exhaust fans and ducting it is often necessary to provide a source of air intake which may require the tenant to open her windows to provide air intake.

Considering the landlord acknowledged that a replacement patio blind is to be accomplished soon, I find it appropriate that the landlord take action to ensure this takes place in a timely manner.

In keeping with the above, I issue the following orders to the parties:

**The landlord is ordered to:**

1. Inspect the caulking around the windows to ensure there is no water ingress, inspect the humidity controller to determine whether it is working properly, and inspect all of the exhaust fans and ducting that remove air from the rental unit, including the dryer ducting, to ensure air is adequately removed from the rental unit within one week of today's date.
2. If it is determined additional caulking around the windows is required, or a repair to the humidity controller and/or the exhaust fans is required, or the ducting requires cleaning, the landlord is to take the necessary action to remedy these issues within two weeks of the inspection done under order #1 above.
3. The landlord shall determine the appropriate settings for the humidity controller and advise the tenant of such within one week of today's date.
4. The landlord shall take action to determine whether the moisture in the closet is the result of insufficient air circulation or from a leak by inspecting the closet further within one week of today's date. The landlord shall make the necessary repair within two weeks of the inspection.
5. The landlord shall have a replacement patio blind installed in the rental unit within two weeks of today's date.

**I order the tenant to:**

1. Ensure the screens covering any exhaust fan in the kitchen, bathroom, and in the dryer are clean and clear of debris within three days of receiving this decision.
2. Ensure the humidity controller is set and operated in accordance with the instructions given to her by the landlord and as necessary to remove moist air

from the rental unit effective immediately upon receiving the instructions from the landlord.

3. Should the rental unit not be equipped with a built-in fresh air intake, the tenant must ensure sufficient air intake when exhaust fans and/or the dryer are running by opening a window.

With respect to the poor communication issue, the Act does not address that issue specifically; however, it is important to point out that there are no exemptions from a party's obligation to repair and maintain the property. As such, the landlord's position that the tenant has threatened to call her lawyer has no bearing to the landlord's obligation to repair and maintain the property.

Having heard the landlord does not appreciate what the property manager described as numerous telephone calls from the tenant, my suggestion is for the tenant to write to the landlord where she seeks repairs or has maintenance issues to raise to the landlord's attention with the exception of "emergency repairs". If the tenant has an "emergency repair" issue to raise, the tenant is expected to telephone the landlord twice, as provided under section 33 of the Act. Emergency repairs are limited and intended to pertain to the most urgent and significant type of repair, as defined in section 33 of the Act as:

- (a)urgent,
- (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c)made for the purpose of repairing
  - (i)major leaks in pipes or the roof,
  - (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii)the primary heating system,
  - (iv)damaged or defective locks that give access to a rental unit,
  - (v)the electrical systems, or
  - (vi)in prescribed circumstances, a rental unit or residential property.

I find the cause of the excessive moisture in the rental unit is inconclusive based on the evidence before me and I am uncertain whether it is the result of the landlord's failure to repair and maintain the property or the tenant's failure to adequately ventilate the rental unit, or a combination of both. Accordingly, I order that both parties share in the cost of the filing fee. Since the tenant paid \$100.00 to file this Application for Dispute Resolution, I award the tenant recovery of \$50.00 from the landlord. The tenant is

authorized to deduct \$50.00 from rent otherwise payable to recover this award and in doing so the landlord must consider the rent paid in full.

Conclusion

I have issued orders to both parties with this decision.

The tenant is awarded recovery of \$50.00 of the filing fee she paid for this Application for Dispute Resolution. The tenant is authorized to deduct \$50.00 from rent otherwise payable to recover this award from the landlord and in doing so the landlord must consider the rent paid in full.

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: April 06, 2021

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Residential Tenancy Branch