



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      RR, RP, FFT

### **Introduction**

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for \$13,266, representing a retroactive reduction in rent, pursuant to sections 65 and 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and her husband attended the hearing. The landlord was represented at the hearing by its property manager ("**JX**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord did not submit any documentary evidence in response to the tenant's application.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) a monetary order of \$13,266;
- 2) an order to the landlord to make repairs to the rental unit; and
- 3) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting December 1, 2019 and ending July 1, 2021. Monthly rent is \$3,800 and is payable on the first of each month. The rent included use of a dishwasher. The tenant paid the landlord a security deposit of \$1,900 and a pet damage deposit of \$1,900. The landlord still retains this deposit. JX testified that the landlord's corporate name has change to since the parties

entered into the tenancy agreement. The former name of the landlord is listed on the cover of this decision.

The tenant testified that she and her family will be moving out of the rental unit at the end of March 2021, and that they have already given the landlord notice of their intent to do so.

The tenant seeks a monetary order in the form of a retroactive rent reduction as compensation for several deficiencies with the rental unit throughout the tenancy.

#### 1. Master Bathroom

On February 20, 2020, the Tenant notified the landlord that a very bad sewer smell was coming out of the master bathroom. This bathroom also has a sliding door which connects to one of the tenant's children's room as well as to the master bedroom. She testified that the odour was so bad that her son would often have to sleep in another room to escape the smell.

The tenant testified that on February 24, 2020, the landlord sent a plumber to the rental unit and he advised the tenant that sewer gases were coming up through the pipes causing the smell and that the pipes needed to be repaired.

The tenant advised the landlord of this. She testified that the landlord advised her that the owner of the rental unit wanted to send someone else to examine the problem, as they did not trust the first plumber.

A second individual attended the rental unit shortly thereafter. This individual, JX admitted, was not a plumber, but was a handyman. The tenant testified that the handyman minimized the issue and told her that he could not smell anything. The tenant was dissatisfied with her interaction with the handyman.

In any event, shortly after the handyman visited, the COVID-19 pandemic reached the province. JX testified that, as a result, the landlord had trouble securing a plumber to attend the rental unit to fix the issue. JX acknowledged that, despite what the handyman told the tenant, a strong smell would emanate from the master bathroom.

JX testified that, at first, the landlord trusted the handyman's assessment over the first plumber's. Subsequently, he testified, the tenant offered to hire her own plumber to fix the problem, which the landlord agreed to. However, on March 26, 2020, the tenant texted JX and advised her that she was unable to arrange for a plumber of her own to attend the rental unit, and asked that the landlord secure one. He testified that the soonest the landlord could secure a plumber to fix the problem was April 19, 2020.

The issue causing the smell was not remediated until April 24, 2020. The tenant seeks compensate in the amount of \$6,533, representing a 25% rent reduction for the period

of time between when she first reported the smell to the landlord and when it was fixed (February 20 to April 24, 2020), plus \$4,000 in compensation for living in a “toxic environment” for this time.

The tenant testified that this smell had returned in November 2020 and its return is the driving force between her ending the tenancy. However, in this application, the tenant is not seeking any compensation in connection to this second odoriferous incident. As such, I will not discuss it further.

The tenant also seeks an order that the bathroom floor be regouted, as the grout between many of the tiles has been displaced. The tenant submitted photos showing this. The tenant is concerned that the lack of grout could allow for water to seep in under the tiles and cause damage to the subfloor.

## 2. Dishwasher

The tenant testified that on October 11, 2020 she notified JX that the dishwasher had stopped working. She testified that the landlord sent a technician to inspect the dishwasher shortly thereafter. However, she testified that the technician told the landlord that repairing the dishwasher would be prohibitively expensive. The landlord then decided to order a new dishwasher to replace the rental unit dishwasher. Parties agree that the new dishwasher arrived on December 16, 2020.

The tenant seeks compensation in the amount of \$1,266 for each month she was without a dishwasher, plus \$70 per day they were without a dishwasher. The tenant testified that her family uses lots of dishes, and that a great deal of their time during the months they were without a dishwasher with spent washing dishes. The tenant’s husband testified that he spent roughly two hours per day washing dishes, and that he values his time at \$35 an hour. It is on this basis that the tenant seeks compensation in the amount of \$70 per day. I am unsure how the tenant arrived at the amount of \$1,266 per month in compensation.

## 3. Refrigerator

The tenant also seeks an order that repairs be made to the refrigerator. She testified that the produce drawers in the refrigerator do not open and as a result, she is unable to use a significant portion of the refrigerator. She testified that she has reported this issue too the landlord, but that due to the refrigerator’s age, the landlord cannot find replacement parts. She testified that the landlord did offer to bring in a mini fridge for their use to supplement the larger refrigerator but testified that there is not sufficient space in the kitchen for the mini fridge. The tenant seeks an order that the drawers be fixed or replaced. She does not seek a monetary order in connection with these repairs.

## Analysis

## 1. Repairs

The issue of the repairs sought is no longer relevant as the tenant indicated that she is vacating the rental unit at the end of March. Former tenants of a rental unit are not entitled to orders requiring repairs to be made.

As such, I dismiss this portion of the tenant's application, without leave to reapply.

## 2. Monetary Order

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32(1) of the Act states:

### **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.

### a. Master Bathroom

I accept the tenant's undisputed testimony that the smell emanating from the master bathroom caused the adjoining child's bedroom to be uninhabitable at some points. I also accept that this odor was unpleasant and disturbed the tenant and the other occupants of the rental unit.

I accept that the tenant first reported the presence of this odor to the landlord on February 20, 2020 and that it was not fixed until April 24, 2020.

I am satisfied that the presence of such an odor constitutes a breach of section 32 of the Act in that it caused a portion of the rental unit not to be suitable for occupation. As such the first step of the four-part test is satisfied.

As a result of the presence of this odor, I find that the tenants lost the full the use of a portion of the rental unit for roughly two months. However, I am not satisfied that the value of their loss is as claimed. The tenant argued that she is entitled to \$4,000 as compensation for having to live in a “toxic environment” and \$2,533 representing a 25% rent reduction for February 20 to April 24, 2020 (64 days).

I first note that a 25% reduction of 64 days rent would be \$2,026 ( $\$3,800 \div 30 \text{ days} \times 64 \text{ days} \times 25\%$ ) and not \$2,533, as claimed by the tenants.

I find that the odour, whose source was next to two bedrooms, caused significant disruption to the tenant and her families lives, and rendered one of the bedrooms unusable. I accept that the tenant and her family suffered general inconvenience and discomfort as a result of the smell as well. Accordingly, I find a 25% rent reduction between February 20 and April 24, 2020 to be an appropriate amount of compensation.

I find that the tenant acted reasonably to minimize her loss by notifying the landlord promptly of the issue. I do not find that the amount of compensation payable to the tenant should be reduced due to the fact that she indicated that she indicated she would secure her own plumber, only to later notify the landlord that she was unable to do so.

It is the landlord’s responsibility to complete the repairs in a timely fashion. The landlord had notice that repairs were required on February 20, 2020. It had confirmation from a plumber that repairs were needed on February 24, 2020. If the owner was unsatisfied with this plumber’s diagnosis (in light of what the handyman reported), the landlord should have sought an opinion from a third plumber or sent a representative to the rental unit to investigate further. It did neither of these. Rather, it improperly placed the responsibility of remediation on the tenant, who should not have been put in that position in the first place. I will not reduce the amount the landlord is required to pay the tenant on this basis.

I do not find that the tenant has established any basis for her claim of \$4,000 to compensate for her and her family living in a “toxic environment”. The rent reduction provided above subsumes this claim. A separate award as claimed by the tenant would amount to double compensation.

Accordingly, I order the landlord to pay the tenant \$2,026.

b. Dishwasher

Policy Guideline 1 states:

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

There is no evidence to suggest that the tenant was responsible for the dishwasher not working. I find that, given the landlord replaced the dishwasher at its own expense, it is more likely than not that the dishwasher was not damaged due to the actions or neglect of the tenant.

I find that the landlord acted reasonably to attempt to address the issue of the broken dishwasher. I find that in replacing the dishwasher after it became non-functioning, the landlord complied with section 38 of the Act. However, the course of action chosen by the landlord deprived the tenant of use of the dishwasher for 66 days (October 11 to December 16, 2020). Section 27(2) of the Act states:

**Terminating or restricting services or facilities**

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord:

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 1 of the Act defines “service or facility” to include “appliances”

So, by opting to purchase a new dishwasher, which would take roughly two months to arrive, the landlord, in effect, terminated tenant’s use of the dishwasher for two months. This facility was provided for in the tenancy agreement. As such, the landlord must compensate the tenant an amount equal to the reduction in value of the tenancy agreement.

Neither party made submissions as to how much the value of the tenancy was diminished by the lack of a dishwasher. In her application, in addition to the \$70 per day claimed as compensation for the time her husband spent washing dishes (a task which I decline to order any amount for, given that I have found that the landlord did not breach section 38 of the Act), she claims “\$1,266 per month” the dishwasher is broken. This amount represents a 33% reduction of monthly rent. With respect, this amount of a reduction is excessively high. I cannot see how the absence of a single appliance would reasonably reduce the value of a rental unit by a third.

I am unsure what the market rent for a comparable rental unit without a dishwasher would be. As she is the applicant, the tenant bears the onus to prove this (per Rule of Procedure 6.6). Without such information I cannot say what an appropriate reduction

would be. In the circumstances, I find that nominal damages, in the amount equal to a 2.5% rent reduction are appropriate. As such, I order the landlord to pay the tenants \$209 ( $\$3,800 \div 30 \text{ days} \times 66 \text{ days} \times 2.5\%$ ).

### 3. Filing Fee

Pursuant to section 72(1) of the Act, as the tenant has been partially successful in the application, she may recover her filing fee from the landlord (\$100).

### **Conclusion**

Pursuant to sections 65, 67, and 72 of the Act, I order that the landlord pay the tenant \$2,332, representing the following:

Description	Amount
Rent Reduction (Bathroom)	\$2,026
Nominal Rent Reduction (Dishwasher)	\$209
Filing fee	\$100
<b>Total</b>	<b>\$2,335</b>

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 8, 2021

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Residential Tenancy Branch