



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, RP, MNR, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a reduction in monthly rent;
- an order requiring the landlord to make necessary repairs to the rental unit;
- reimbursement of the cost of making emergency repairs; and
- recovery of the filing fee.

The tenant and the landlord listed on the style of cause page attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Neither party raised any concern about the service of evidence or the tenant's application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a reduction in monthly rent?

Is the tenant entitled to an order requiring the landlord to make necessary repairs to the rental unit?

Is the tenant entitled to reimbursement for the cost of emergency repairs?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The evidence was that this tenancy began on August 1, 2020, for a fixed term through July 31, 2022, that monthly rent is \$1,950, and the security deposit and pet damage deposit paid by the tenant was \$975, each. Filed into evidence was a copy of the written tenancy agreement, which included a 2 page addendum.

In support of his application, the tenant explained that he and his family of six rented the entire house, which included an unfinished basement.

The tenant submitted that they intended to occupy the entire house due to their large family and as a result, they took it upon themselves to finish the basement. This included laying down floors and putting up wall dividers, which were removable. The tenant also had placed furniture in the basement, for some of the children.

On November 1, 2020, according to the tenant, the drainage system began to fill, allowing water, or flooding, to occur in the basement.

The tenant submitted that they notified the landlords and they responded right away. The tenant admitted that the repairs to the water system were made quite quickly, but that they were still displaced during this time.

The tenant explained that they had to disassemble the basement flooring and dividers, and remove the furniture.

The tenant submitted that he is entitled to \$1,452.96 for emergency repairs.

In his application, the tenant wrote, in part: *"To protect our personal possessions, my wife and i spent hours for many days vacuuming and drying the water in*

*basement. Until such time as we removed our items and mounted furniture on wood supports.”*

The tenant explained that he and his wife went down to the basement every 10 minutes and the claim is for their labour and vacuuming. The tenant submitted that they had to rent a storage container to store their furniture and fixtures. Filed into evidence was an invoice for the storage container in the amount of \$437.96 and a personal invoice for “emergency” labour, vacuuming labour, disassembling furniture, flooring uninstallation, and mounting the furniture, in the amount of \$1,015.00.

As to the claim for a reduction in monthly rent, the tenant explained that they lost the use of a portion of the home, the basement, due to the repairs, from November 15<sup>th</sup>-30<sup>th</sup>, in the amount of \$376.55 and from December 1<sup>st</sup>-31<sup>st</sup>, in the amount of \$753.10. The total claim is \$1,129.65.

The tenant submitted that the total square footage of the home is 2566sf and the portion they were unable to use is 991sf.

The tenant submitted that he is entitled to the relief sought in the application as the landlord’s obligation is to provide a home in a habitable condition. The tenant also submitted that the landlord knew that the tenants intended to occupy the basement.

Included in the tenant’s relevant evidence was email communication between the parties, photographs, and a video.

#### **Landlord’s response –**

The landlord submitted the basement was not intended as a living space for the tenants, as it was a large, unfinished space and not in good condition. The landlord submitted that they did not want the tenants to live in the basement, as reflected by the addendum to the written tenancy agreement.

This clause, #4, provides as follows:

“The tenant understands landlord does not encourage the tenant to live in the basement and the tenant will be liable to anything that happens for living in the basement.”

The landlord submitted that they were not sure the basement was a liveable space, as there were exposed walls and the electrical panel. The only items in the basement were laundry facilities.

The landlord said that the monthly rent was contemplated without the use of the basement.

As to the tenant's monetary claim, the landlord submitted that they were notified of the water issue on November 16<sup>th</sup> and that the tenant said he would arrange for the repair quotes.

The landlord submitted that it was not reasonable to keep vacuuming the basement, as the water was a result of rain and they had asked the tenant to stop vacuuming the water.

The landlord said they resolved the matter as quickly as possible, considering that all the local contractors were busy during the rainy season.

The landlord's relevant evidence included an invoice from the contractor making the repairs, for the amount of \$15,165, a text message to the contractor asking for an update, and text message communication between the landlord and tenant, dated November 19, 2020.

### Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

### **Request for repairs –**

Section 32 of the Act requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Where a tenant requests repairs, I find the landlord must be afforded a reasonable amount of time to take sufficient action.

As to the tenant's request for an order requiring the landlord to make necessary repairs, I find the evidence is clear that the landlord made the repairs dealing with water entering the basement. The tenant confirmed that the landlord responded right away and the repairs were made quite quickly.

I therefore **dismiss** the tenant's claim for an order requiring the landlord to make repairs to the rental unit, without leave to reapply.

### **Request for monetary compensation for making emergency repairs –**

As to the tenant's request for monetary compensation for the cost of making emergency repairs, section 33 of the Act, emergency repairs are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and 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.*

Under sections 33(3), (4) and (5) of the Act

A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number

provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, I find the tenant is not eligible for reimbursement of emergency repairs.

First, I find the tenant submitted insufficient evidence to prove that the beginnings of a drainage system failure was an emergency repair as defined by the Act.

Second, the tenant confirmed the landlord responded right away when notified of the beginnings of a drainage system failure and made the repairs quite quickly. Therefore, the tenant did not have to take on the financial responsibility of making emergency repairs or any repairs at all.

Further, I find it is only reasonable that the tenant would protect their personal property. I do not find the tenant is entitled to costs associated with protection of their own property.

The tenant was informed that they were responsible for insuring their belongings against fire and flood and were required to show the landlord proof of insurance. This was clause 6 in the addendum to the written tenancy agreement.

By way of his signature on the written tenancy agreement, the tenant was clearly aware the basement was not meant as a living space and that they would be liable for anything that happens for living in the basement. This was stated in clause 4 of the addendum.

I find that a tenant's insurance policy generally covers expenses for damage to contents, storage, hotel, gas, moving, and food costs.

The documentary evidence shows the tenant carried tenant's insurance, and if so, it was the tenant's choice not to make a claim with his insurance carrier.

It also was the tenant's choice to put in flooring, dividers, and furniture in the basement. I find I have no authority under the Act to grant the tenant compensation for choices made by the tenant.

I find the evidence shows that the landlord complied with their obligation under the Act to address the tenant's repair requests in a timely manner and I find this response to be comprehensive and thorough.

For the above reasons, I **dismiss** the tenant's claim for the cost of emergency repairs in the amount of \$1,452.96, **without leave to reapply**.

*Reduction in rent; compensation for loss of use-*

The tenant said that the landlord was aware they intended to use the basement as a living space. There was additional support for the tenant's testimony in the tenant's emails. I, however, do not find that emails supersede the requirements, terms and conditions contained in the written and signed tenancy agreement.

The tenancy agreement shows the basement was not intended to be used as a living space. It was a personal choice made by the tenant to convert the unfinished basement into a living space.

The tenant still had access to the laundry facilities and the remainder of the house. I therefore find the tenant had not lost the use of any portion of the rental unit as it was originally intended.

For these reasons, I find the tenant submitted insufficient evidence that he is entitled to a reduction in monthly rent for a loss of use of a portion of the rental unit.

For the reasons addressed in my findings above, as I have determined the landlord provided the necessary repairs in a timely and comprehensive manner, I **dismiss** the tenant's claim for a reduction in rent, **without leave to reapply**.

As I have dismissed the claims of the tenant, I do not award the tenant recovery of the filing fee cost.

Conclusion

For the reasons above, the tenant's application is dismissed in its entirety, due to insufficient evidence.

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 6, 2021

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Residential Tenancy Branch