



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, RP, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to carry out repairs, pursuant to section 32; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by agent TH (the landlord). Tenants AA and DR were assisted by advocate MA. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

### Preliminary Issue – Service of the Notice of Hearing and Evidence

I accept tenant's DR testimony that the landlord was served with the application and evidence (the materials) in person on March 18, 2021, in accordance with section 89(1)(a) of the Act. The landlord confirmed receipt of the materials and that she had enough time to review them.

Tenant AA confirmed receipt of the landlord's two evidence packages on March 19, 2021, one for each tenant. I accept the landlord's evidence.

Tenant AA stated she served the landlord a second package of evidence by email sent on March 30, 2020 containing recent text messages and two photographs taken on March 30, 2020.

The landlord confirmed receipt of the email containing only two photographs and that she had enough time to review them.

Rule of Procedure 3.17 states the late evidence may be accepted if the late evidence does not unreasonably prejudice the other party or result in a breach of the principles of natural justice. As the landlord confirmed she had enough time to review the two photographs taken on March 30, 2020, I accept the two photographs into evidence.

Based on the landlord's convincing testimony, I find the text messages were not served and do not accept them into evidence.

#### Preliminary Issue – Named Landlord

TH explained she is the property manager for AA and the tenancy agreement is between the tenants and AA.

Section 64(3)(c) of the Act allows me to amend the application, which I have done to remove TH's name and include the proper landlord - AA - as the respondent of this application.

#### Preliminary Issue – Partial Settlement

At the hearing both parties agreed to the following binding settlement for the claim for an order requiring the landlord to carry out repairs.

1. The tenants agree to provide the landlord with vacant possession of the subject rental property by 1:00 P.M. on April 30, 2021.
2. The landlord will not seek compensation from the tenants for the early termination of the fixed-term tenancy, including liquidated damages.

The application for an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65, will be adjudicated.

#### Issues to be Decided

Are the tenants entitled to:

- an order to reduce the rent for repairs?
- an authorization to recover the filing fee for this application

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained

rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed-term tenancy for the period of September 01, 2020 to August 31, 2021. Monthly rent is \$2,300.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$1,150.00 was collected and the landlord holds it in trust. The tenancy agreement and inspection report were submitted into evidence.

The landlord confirmed receipt of eight rent payments in the total amount of \$18,400.00 since September 01, 2020. The tenants are claiming for a retroactive rent reduction of 25% of rent paid due to the mice infestation, under section 65(1) of the Act.

Tenant DR stated the landlord assured her the rental building did not have a mice infestation when the tenants visited the rental unit in August 2020. The landlord testified she does not recall discussing mice infestation with the tenants when they visited the rental unit. The landlord has been living in the 70-year-old rental building for eight years and only recalls one mice infestation in another rental unit.

Tenant DR affirmed other tenants reported mice infestation in the rental building in online forums and she did not know of these reports when she signed the tenancy agreement. The landlord said she is not aware of other tenants reporting mice infestation in the rental building.

Both parties agreed that tenant AA notified the landlord about mice in the rental unit on September 10, 2020 and currently there is a mice infestation. The landlord installed mice traps in the rental unit on September 11, 2020.

Tenant DR noticed mice in the rental unit for the first time on October 14, 2020 and notified the landlord. The landlord asked tenant DR to be patient and offered the tenants to move to another unit in the same rental building. Tenant DR believes the other unit would also have mice infestation and moved to a friend's house because she fears rodents.

The landlord hired a pest control company on October 16, 2020. The pest control inspected the rental unit on October 16, November 06 and 27, 2020. The November 06, 2020 pest control report states: "no sightings in unit since our initial visit. No droppings." The November 27, 2020 report states: "unit [omitted] has not had any most [SIC] issues since the initial visit."

A second pest control company was hired to inspect the common areas of the rental building on October 22, 2020. The December 29, 2020 report states: "added and replaced rodent baits as necessary, checked/reset/dates traps as needed" The January 29, 2021 report states: "resident reports noise in the walls. Call if any further activity occurs."

Tenant AA continues to occupy the rental unit. Both tenants said they are mentally affected by the mice infestation and because of this they only filed this application on January 05, 2021.

The landlord stated there is a large construction one block from the rental building and this causes mice infestation. The landlord claims she has been diligent with this issue.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 65(1) of the Act states:

(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], **if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement**, the director may make any of the following orders:

[...]

(b) **that a tenant must deduct an amount from rent to be expended on** maintenance or a repair, or on a service or facility, as ordered by the director;

[...]

(f) **that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;**

(emphasis added)

Residential Tenancy Branch Policy Guideline 22 states an arbitrator may order that past or future rent be reduced :

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

Section 65(1) of the Act should be read in conjunction with sections 7 and 67:

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch 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.

The tenants claim they suffered a reduction in their tenancy in the amount of 25% of rent paid because of a mice infestation in the rental unit. Section 32 of the Act states:

(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.

Residential Tenancy Branch Policy Guideline 01 states:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

I accepted both parties undisputed testimony that the landlord was notified on September 10, 2020 about mice infestation in the rental unit and acted immediately to address the mice infestation by installing mice traps on September 11, 2020. The landlord hired a pest control company on October 16, 2020, two days after the tenants informed her of new mice sightings and a second pest control company was hired on October 22, 2020 to inspect the common areas of the 70-year-old rental building.

Based on both parties uncontested testimony and the pest control reports, I find the landlord breached section 32 of the Act by failing to provide a healthy rental unit and the tenants suffered a loss because of the landlord's non-compliance with the Act.

Tenant AA is currently living in the rental unit. The reports submitted in to evidence indicate the mice infestation has been addressed and the current mice sightings have been sporadic. The nature of the issue was not so severe that the rental unit was uninhabitable. The landlord was diligent and acted quickly to address the mice infestation and offered the tenants another rental unit in the same building. Tenant DR admitted she was only aware of publicly available mice infestation complaints in the rental building after she signed the tenancy agreement. The tenants reasons for not submitting an application for dispute resolution earlier were vague.

Thus, I find the tenants failed to prove, on a balance of probabilities, that they suffered a reduction in their tenancy in the amount of 25% of rent paid. Considering the circumstances above mentioned, I find that an appropriate loss in the value of the tenancy resulting from the landlord's breach of section 32 of the Act is 5% of the monthly rent paid (\$115.00 per month).

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in the tenants' favour in the amount of \$920.00 (\$115.00 per month from

September 2020 to April 2021) to compensate the tenants for the reduction in value of the tenancy agreement. As the tenancy will end on April 30, 2020, I grant the tenants a monetary order, per section 67 of the Act.

The tenants are partially successful in their application. Thus, I award the tenants the return of the filing fee.

In summary, the tenants are awarded \$920.00 for the reduction in value of the tenancy agreement and \$100.00 for the return of the filing fee, totaling \$1,020.00.

### Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, pursuant to section 63(2) of the Act, I issue an order of possession to the landlord, which is to take effect by 1:00 P.M. on April 30, 2021. The landlord is provided with this order in the above terms and must serve it on the tenants in accordance with the Act. If the tenants fail to comply with this Order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the Act, I grant the tenants a monetary order in the amount of \$1,020.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order. 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.

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 23, 2021

---

Residential Tenancy Branch