



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RP, RR, FFT

### Introduction

On February 15, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”), seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing late, at 9:35 AM; however, the Landlord did not attend at any point during the 70-minute teleconference. At the outset of the hearing, I explained to the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. The Tenant acknowledged these terms. As well, the Tenant provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and some evidence to the Landlord by registered mail on February 26, 2021 (the registered mail tracking number is noted on the first page of this Decision). The registered mail tracking history indicated that this package was signed for by the Landlord on March 4, 2021. Based on this undisputed evidence, and in accordance with Sections 88, 89, and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and accompanying evidence. As such, I have accepted the evidence that was submitted with this package and will consider it when rendering this Decision.

The Tenant advised that she served additional evidence, including video evidence, to the Landlord by mail and by posting it to the Landlord’s door. However, she was not sure when she did this other than that it was in accordance with the “seven day” requirement that she was required to serve this evidence by. As well, she did not check to see if the Landlord could view this digital evidence prior to serving it, pursuant to Rule 3.10.5 of the Rules of Procedure. She stated that the Landlord informed her that he received this evidence, but he would not open it as she sends him too much mail. Records indicate that this additional evidence was submitted to the Residential Tenancy Branch on May 10 and May 13, 2021. As this additional evidence was not submitted to the Residential Tenancy Branch in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it

when rendering this Decision.

The Tenant was given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a repair Order?
- Is the Tenant entitled to a rent reduction?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on November 1, 2017, that rent was currently established at \$2,075.00 per month, and that it was due on the first day of each month. She stated that a security deposit of \$975.00 was paid despite this not being indicated on the tenancy agreement. A copy of the tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that there has been a long-standing array of repair issues that have been brought to the Landlord's attention, but the Landlord has refused to take the necessary action to address these repairs. Most significantly was a repair to a leak in the roof. The Tenant applied for Dispute Resolution seeking an emergency repair Order for this issue and a hearing was set down for April 23, 2021. The Landlord did not attend that hearing and the Tenant stated that this was typical of the manner with which the Landlord dealt with any requests for repairs. Similar to the April 23, 2021 teleconference hearing, the Landlord failed to make an appearance at this May 20, 2021 Dispute Resolution proceeding.

A Decision was rendered, dated April 23, 2021, where it was determined that emergency repairs to the rental unit were necessary (the relevant file number is noted on the first page of this Decision). The Landlord was Ordered to hire a qualified professional to investigate and assess the nature of the leak in the roof and/or deck as soon as is reasonably possible, and within a week of being deemed to have received that Decision. Furthermore, the Landlord was Ordered to have the necessary repairs commence within a week of receiving the qualified professional's recommendation for

repairing the leak in the roof and/or deck, and to have these repairs fully completed within a reasonable period of time after the work commenced.

The Tenant testified that she mailed a copy of that Decision to the Landlord on April 23, 2021 and posted a copy to his door as well. To date, the Landlord has not complied with these Orders.

The Tenant advised that she is now seeking compensation in the amount of **\$1,000.00** as a loss that she has suffered for her effort and time spent attempting to have the Landlord address repair issues in the past. She has addressed her concerns in writing to the Landlord, she has made efforts to assist him with finding qualified repair persons to effect the necessary repairs, and she has even provided him with quotes for these repairs. However, she stated that the Landlord is elderly, senile, aggressive, and has refused to complete any repairs. In addition, she submitted that when contractors have been brought in to provide quotes, he has been belligerent to them and either driven them away or refused their recommendations for necessary repairs. She played an audio recording of the Landlord responding to her request for repairs, where the Landlord appeared hostile, condescending, and verbally abusive. She stated that the rental unit is in a state of disrepair and many of these issues have been present since the start of the tenancy. She has made numerous requests to the Landlord in writing to have these repairs addressed and she has assisted him with finding quotes for these issues to be completed, yet the Landlord continues to refuse completing any repairs. She submitted documentary evidence to support this position.

The Tenant also advised that she is seeking a repair Order for the walls to be painted, especially given that she stated that the tenancy agreement indicated that this would be done at the start of the tenancy. She submitted that the paint on the walls is in terrible condition, that it is chipped and marked, that the crown moulding has been painted to look like wood, and that there is a hole in the wall from a doorknob being smashed through it, which was present at the start of the tenancy. She stated that the Landlord informed her that this was done to allow the door to be opened wider. She referenced pictures submitted to support her position on the condition of the walls.

The Tenant advised that she is seeking a rent reduction in the amount of **\$590.00** per month due to the number of repair issues that have been ignored. She testified that the carpets are twenty years old and beyond their useful life. Since the start of the tenancy, she has been regularly having the carpets cleaned; however, she stated that the cleaners have informed her that the carpets are in such a state of disrepair that they are not worth cleaning any more. She submitted that the Landlord has recently replaced the carpet in the living room with vinyl flooring; however, the carpeting in the rest of the rental unit still needs to be replaced. In addition, she stated that in the living room area where the vinyl flooring has been laid down, baseboards have not been laid down and wedges have been left at the base of the wall to hold the flooring in place. She stated that the Landlord has refused to have these wedges removed, that he yelled at the flooring installation person, and that he will not have the baseboards installed despite

being informed by the flooring company that this will render the project unfinished. She submitted pictures to demonstrate the condition of the carpet and the incomplete flooring repairs.

She also advised, as per the previous hearing, that there has been a leak from her ceiling. This has occurred since the start of the tenancy and is a result of a balcony that is disintegrating. Water has subsequently seeped in the second bedroom ceiling through a light fixture, rendering this bedroom unusable. She stated that a professional roofing company was already doing work on the property and they determined that the roof and deck required being rebuilt entirely to fix the leak into her rental unit. However, the Landlord refused this suggestion and had this company put a tarp on the roof instead. After a more recent leak into the rental unit, an electrician determined that no electrical repairs could be made until the roof and deck repairs were completed. She stated that the roof and deck need to be repaired first, then the resultant water damage and mould throughout the rental unit, especially in the second bedroom, can then be addressed accordingly. The Tenant testified that the Landlord has not taken any steps to comply with the emergency repair Orders dated April 23, 2021.

Finally, the Tenant advised that the rental unit came with a kitchen sink that was old, dirty, and unusable. She requested that the Landlord replace this, and the Landlord complied in 2017. However, he replaced it with another old sink that was equally neglected. She stated that it turns black when used and she must bleach it constantly, but this does not adequately remove the dirt and grime that is reflective of its age and quality. She provided a picture to demonstrate the condition of this sink.

The Tenant also advised that she is seeking a one-time rent reduction in the amount of **\$350.00** so that she can pay for and replace the baseboards herself.

In addition to requesting repair Orders for the above-mentioned repairs, the Tenant advised that she is seeking approval to hire the appropriate contractors to conduct repairs to the roof, balcony, and bedroom, and then withhold this amount from rent accordingly.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a state of decoration and repair that “complies with the health, safety and housing standards required by law” and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

Section 33 of the *Act* outlines the Landlord's and Tenant's duties when an emergency repair is required.

### **Emergency repairs**

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (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.
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
- (3) 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.
- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:
- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
  - (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
  - (c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

With respect to the Tenant's claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Regarding the Tenant's request for compensation in the amount of \$1,000.00, the undisputed evidence before me is that a Decision has already been rendered on April 23, 2021 with respect to the emergency repair issue. The Landlord was determined to be negligent and was already clearly Ordered to **"hire a qualified professional to investigate and assess the nature of the leak in the roof and/or deck"**, then **"have the necessary repairs commence"**, and have those repairs be **"fully completed within a reasonable period of time after the work commences"**, in accordance with the qualified professional's recommendations.

However, the consistent and undisputed evidence is that despite these Orders, the Landlord has neglected to comply and has not taken any steps to effect the necessary and Ordered repairs, to date. I find that the Landlord's non-compliance is deliberately and blatantly flouting the required emergency repairs that he has been Ordered to complete.

In addition, I am satisfied from the Tenant's uncontested evidence that she has brought other repair requests to the Landlord's attention, and he has also neglected to properly address these concerns as well. In general, I find the Tenant's testimony that these requests have been met with abuse, delay, and/or outright refusal despite the Tenant's efforts to assist the Landlord in effectively managing these repairs, to be more credible and consistent.

When reviewing the totality of the evidence before me, I am satisfied that the Tenant has properly informed and communicated to the Landlord of the repairs and issues requiring the Landlord's attention. As well, she has given him ample opportunity to correct them. I find that there is a clear pattern of continued non-compliance by the Landlord in neglecting his duties to provide a rental unit that meets housing, health, and safety standards. As a result of the Landlord's persistent inaction, I am satisfied that the Tenant has suffered from a loss of use of the rental unit, despite paying full rent without any compensation for having to live through this situation. I find that the Landlord's intentional and egregious lack of action are in breach of the *Act*, and the previous Decision. Consequently, I find that the Tenant has established a loss, and I grant a monetary award in the amount of **\$1,000.00**. The Tenant is permitted to recover this amount by withholding it from June 2021 rent. Should this Decision not reach the Tenant by June 1, 2021, the Tenant is permitted to reduce this amount from July 2021 rent.

With respect to the Tenant's request for a rent reduction in the amount of \$590.00 per month, Section 65(1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement. I find it important to note that Policy Guideline #40 outlines the useful life of building elements and can be used for determining damages. This Policy Guideline indicates that paint has a useful life of four years and a carpet has a useful life of 10 years, generally. When reviewing the undisputed evidence before me, I am satisfied that the walls are in a state of disrepair and past their useful life, which requires being repainted. As well, the hole in the wall from the doorknob that was present at the start of the tenancy is clearly not intentional by design but was damage that required being repaired prior to the tenancy commencing. As such, I grant a monetary award in the Tenant's favour in the amount of **\$200.00** per month to compensate the Tenant for the loss in value of her tenancy stemming from the Landlord's failure to address this necessary repair.

For this issue, I Order that the monthly rent for this tenancy for June 2021 be reduced by \$200.00. Furthermore, on each successive month where the repairs and the repainting of the walls of the rental unit have not been completed, the Tenant is authorized to reduce the monthly rent by a **further \$100.00 until such time as these repairs are completed, in their entirety**. In effect, this is an escalating rent reduction until these repairs are completed (IE. June 2021 rent reduced by \$200.00, July 2021 rent reduced by \$300.00, August 2021 rent reduced by \$400.00 etc.). Following the completion of these repairs, this rent reduction will cease.

Regarding the condition of the carpet, Policy Guideline #40 outlines that the useful life of a carpet is 10 years. Given that the Landlord has already replaced a portion of the carpet in the rental unit, and based on the Tenant's undisputed evidence of the condition of the carpet, I am satisfied that the carpet in the rental unit is well beyond its useful life and it is necessary for the Landlord to replace. Moreover, I do not find it acceptable that the wedges can be left at the base of the wall as this is clearly not a complete repair of the flooring. As such, I issue a monetary award in the Tenant's favour

in the amount of **\$200.00** per month to compensate the Tenant for the loss in value of her tenancy stemming from the Landlord's failure to address this necessary repair. For this issue, I Order that the monthly rent for this tenancy for June 2021 be reduced by \$200.00. Furthermore, on each successive month where the replacement of the remaining carpet and the completion of the existing flooring project have not been completed, the Tenant is authorized to reduce the monthly rent by a **further \$100.00 until such time as these repairs are completed, in their entirety**. In effect, this is an escalating rent reduction until these repairs are completed (IE. June 2021 rent reduced by \$200.00, July 2021 rent reduced by \$300.00, August 2021 rent reduced by \$400.00 etc.). Following the completion of these repairs, this rent reduction will cease.

With respect to the repair of the roof and the balcony, it has already been determined that the leak should be addressed by the Landlord as an emergency repair. As the Landlord has ignored the previous Order and has neglected to take any action to address this issue, I issue a monetary award in the Tenant's favour in the amount of **\$500.00** per month to compensate the Tenant for the loss in value of her tenancy stemming from the Landlord's failure to address this necessary repair.

For this issue, I Order that the monthly rent for this tenancy for June 2021 be reduced by \$500.00. Furthermore, on each successive month where the repair of the roof, balcony, and associated damage in the rental unit from the resultant leak of water have not been completed, the Tenant is authorized to reduce the monthly rent by a **further \$100.00 until such time as these repairs are completed, in their entirety**. In effect, this is an escalating rent reduction until these repairs are completed (IE. June 2021 rent reduced by \$500.00, July 2021 rent reduced by \$600.00, August 2021 rent reduced by \$700.00 etc.). Following the completion of these repairs, this rent reduction will cease.

Alternatively, as this leak in the ceiling has already been deemed an emergency repair, Section 33 permits the Tenant to undertake the leaking roof repairs herself and reduce the rent accordingly. Should the Tenant elect to conduct this extensive and costly repairs herself, the above noted rent reduction would not apply as she would simply be withholding the associated cost of the emergency repair from her rent. Any repairs undertaken by the Tenant must be estimated and conducted by a qualified professional.

Finally, with respect to the replacement of the sink, I am satisfied by the undisputed evidence that the Landlord has provided the Tenant with a kitchen sink that is beyond its useful life. As such, I issue a monetary award in the Tenant's favour in the amount of **\$50.00** per month to compensate the Tenant for the loss in value of her tenancy stemming from the Landlord's failure to address this necessary repair.

For this issue, I Order that the monthly rent for this tenancy for June 2021 be reduced by \$50.00. Furthermore, on each successive month where the kitchen sink has not been replaced by a functioning sink that is in a reasonably suitable condition, the Tenant is authorized to reduce the monthly rent by a **further \$25.00 until such time as this repair is completed, in its entirety**. In effect, this is an escalating rent reduction until this repair is completed (IE. June 2021 rent reduced by \$50.00, July 2021 rent



reduced by \$75.00, August 2021 rent reduced by \$100.00 etc.). Following the completion of this repair, this rent reduction will cease.

In addition, I also **Order** that the Landlord conduct repairs to the above noted issues, as soon as is reasonably possible, and these repairs must be completed by a qualified professional. However, as I am satisfied that the Landlord has been aware of these issues for a significant period of time and has failed to take the necessary steps to remedy this situation in a timely manner, as is his responsibility as a Landlord, it is possible that the Landlord may still refuse to complete the necessary repairs. This scenario may be likely as the Landlord has already refused to comply with the previous emergency repair Order dated April 23, 2021. While Ordering the Landlord to complete these repairs may be met with non-compliance, the escalating rent reduction should incentivize the Landlord to take responsibility and manage his obligations as a Landlord in accordance with the *Act*.

As it is evident that there have been repeated issues with non-compliance on the part of the Landlord, I twice attempted to advise the Tenant during the hearing that if she was concerned that the Landlord may continue to refuse to comply with Decisions of the Residential Tenancy Branch, she could speak with an Information Officer about initiating an investigation into the Landlord's behaviour by the Compliance and Enforcement Unit of the Branch. However, the Tenant interrupted me on both occasions.

Regardless, the Landlord is cautioned that this separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. After an investigation is initiated, they have the sole authority to determine whether to proceed with a further investigation into a matter and the sole authority to determine whether administrative penalties are warranted in certain circumstances. With respect to the Tenant's request for a one-time rent reduction in the amount of \$350.00 to pay for and complete the replacement of the baseboards herself, it is the Landlord's responsibility under the *Act* to repair and maintain the rental unit. Moreover, a rent reduction has already been granted accordingly and it is incumbent on the Landlord to complete the necessary repairs. Furthermore, as the Landlord has already contracted a company to partially install vinyl flooring, and as the baseboard repair would likely need to be completed in conjunction with this installation by a qualified professional, I dismiss this request in its entirety.

As there are many different repairs to be addressed by the Landlord, the rent reductions would likely cease on different months after each associated repair was completed. Once the totality of the repairs are completed, I **Order** that the rent will return to the normal, monthly amount required by the tenancy agreement and the *Act* on the month following the completion of all of these repairs.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the filing fee in the amount of \$100.00, which she may deduct from the next

month's rent or otherwise recover from the Landlord.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a rent reduction for June 2021 rent as follows:

### Calculation of Monetary Award Payable by the Landlord to the Tenant

Compensation for ongoing neglect of repairs	\$1,000.00
Repair and repainting of walls	\$200.00
Replacement of carpet and baseboards	\$200.00
Emergency repair of roof leak and balcony	\$500.00
Kitchen sink replacement	\$50.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$2,050.00</b>

As a note, should this Decision not reach the Tenant by June 1, 2021 when rent is due, the Tenant is permitted to reduce this above amount for June 2021 from July 2021 rent. As well, should the respective repairs not be completed, the applicable July 2021 rent reductions will still be in force and the appropriate amounts, as stated above, shall apply to July 2021 rent.

In addition, as a final note, during the hearing, the Tenant made comments that gave me reason to believe that due to the Landlord's age and mental state, he may be incapable of managing his financial and legal affairs, which includes the adequate management of the rental unit. Section 32 of the *Adult Guardianship Act* states that "If a person has reason to believe that an adult may be incapable of managing the adult's financial affairs, the person may (a) if the person is a health care provider, request a qualified health care provider to assess the adult's incapability, or **(b) in any case, notify the Public Guardian and Trustee of the person's belief, and the Public Guardian and Trustee may request a qualified health care provider to assess the adult's incapability.**"

While the Tenant has not specifically made this argument or provided evidence to support this conclusion, due to issues raised, the Residential Tenancy Branch will forward a copy of this Decision for the Public Guardian and Trustee to determine if the Landlord is in need of support and assistance.

### Conclusion

I **Order** that the Landlord conduct repairs to the above noted issues, as soon as is reasonably possible, and these repairs must be completed by a qualified professional.

The Tenant is entitled to withhold the amount of **\$2,050.00** in satisfaction of these claims from June 2021 rent. Should the Decision not reach the Tenant before rent is

due on June 1, 2021, the Tenant may withhold this amount from July 2021 rent. In addition, on each subsequent month where repairs have not been completed, the Tenant is authorized to reduce the monthly rent by a further amount as stipulated above until such time as the repairs are completed in their entirety, pursuant to this Decision.

The Tenant is also instructed to inform the Landlord of these deductions to prevent the Landlord from serving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for deficient rent.

Should a dispute arise as to the extent to which the repairs Ordered have been completed sufficiently, I **Order** that the rent reduction continue until such time as the Landlord has applied for and obtained an Order, from an Arbitrator appointed under the *Act*, to modify the reduced rent. The Landlord is at liberty to apply for a determination as to the Landlord's compliance with this Decision once the Landlord has undertaken the repairs Ordered.

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: May 27, 2021

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Residential Tenancy Branch