



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, RR, MNDCT, FFT

### Introduction

The tenant filed an Application for Dispute Resolution on June 8, 2021 seeking the following:

- compensation for monetary loss or other money owed
- an order that reduced rent for repairs, services or facilities agreed upon but not provided
- repairs to the unit, site, or property, this after a prior request to the landlord
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on September 28, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the landlord confirmed they received the notice of this hearing and the tenant’s evidence via registered mail. The tenant verified they received the landlord’s evidence that was delivered in person.

### Preliminary Issue

During the hearing, I determined that one piece of documentary evidence that both parties were familiar with and referred to was not submitted in its entirety by either party. The tenant provided this piece of evidence by the end of the day of the hearing. This was my request, and I allowed the system to receive the same. I find the document was submitted in a timely fashion on the day of the hearing, and I consider its contents, where relevant, in my decision below.

### Issues to be Decided

Is the tenant entitled to a monetary order for loss or compensation pursuant to s. 67 of the *Act*?

Is the tenant entitled to an order that reduces the rent for repairs, services, or facilities agreed upon but not provided by the landlord, pursuant to s. 65 of the *Act*?

Is the landlord obligated to make repairs where the tenant had previously made the request, pursuant to s. 65 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The tenant provided a copy of the tenancy agreement for the rental unit. Both parties signed the agreement on August 9, 2015 for the tenancy starting on September 1. The rent agreed to was \$2,140 which then increased to \$2,283.50 by the time of the tenant's Application. The agreement sets out obligations for both the landlord and tenant regarding repairs. These terms conform with the *Act*, and there was no other addendum or piece of the agreement stating otherwise.

The tenant provided a statement dated June 9, 2021. They describe the multi-unit dwelling in which they live on the top two floors. The front door leads to a stairwell, with a door at the top leading to their rental unit. At the start of the tenancy when they inquired about its repair, they were told "it was on the list." From 2017 to 2021, the tenant made further inquiries on its repair. On May 7, 2021 the tenant raised concerns to the landlord about "breathing in there".

A key message is that of May 17, 2021 where they reported to the landlord their interaction with the handyman, who informed the tenant that the stairwell contained exposed asbestos. As the tenant also described in the hearing, the handyman "tore off a piece of cracked drywall" and announced that it contained asbestos. The handyman stated they had dealt with that type of issue before. The handyman did not attend the following day as promised.

This prompted the tenant's call to the city who assigned a case file. Two consultants from the city came and took samples. They advised the tenant to avoid using the area until it is repaired.

This email also contains the tenant's concern about the stairwell being the only means of entry that is locked. The alternate entry is their patio door at the back of the building that did not lock. That meant their entry/exit was through this passage that contained asbestos. The tenant attached photos of the stairwell area; these show cracked wall panelling, with one chunk missing exposing asbestos.

As of the date of that letter, the tenant requested 50% of rent for the month of May 2021; this is \$1,141.75. The requested a fix to the stairwell within 1 week "in compliance with all health, safety and housing standards required by law." For every month thereafter the fix is delayed, they will seek 25% of the monthly rent; this is \$570.88.

A second letter of June 9, 2021 sets out more detail of the tenant's request. This is that the stairwell was the storage space for their bicycle. With this space unavailable, the tenant stored their bicycle in their living room. They stated: "It is not fair that I should pay full rent for a suite that has now been diminished in size, quality, and personal enjoyment." They re-stated their claim for 25% rent reduction, "until matters are resolved." They cited the discovery of asbestos on May 14 as the "ideal time to retroactively begin the deduction."

The tenant included 15 photos of the area for reference. There is a photo of the separate balcony entry and the back of the house. For the period from May 14 to May 21, the tenant was without a lock on the patio door; thus the tenant was unable to lock their rental unit when leaving.

This was the substance of the tenant's Application to the Residential Tenancy Branch on June 8, 2021. In the hearing the tenant outlined that the city called them on August 11 saying the tenant could use the stairwell; however, as stated by the tenant in the hearing, "they didn't trust what was being provided to them."

The tenant included a copy of the emails with the landlord from May 18 onwards. They were querying the handyman's absence in the days following May 14. After they proposed a rent reduction for the diminished access to their rental unit, the landlord replied: "If you insist on reducing the monthly rent, I will provide you with a Two Month Notice to End Your Tenancy as I will then be moving into my new home." By June 1, the landlord stated: "There will be no reduction in rent. You have not had any increase in rent for a very long time."

The tenant provided other earlier emails to show the landlord's "wilful neglect to repair" extends to other prior matters. This includes the roof, flooding, and the basement.

In response to the tenant's claim, the landlord provided documents that show their efforts to address the problem. One is their contact with an Environmental Protection Officer from the city on May 21. That officer noted that testing was required to assess whether potentially hazardous building materials would be disturbed during any renovation.

One is an invoice from a restoration company for work they completed on July 2, 2021. This was "to remove and dispose lead containing stucco from ground level on east side of premise." A certificate showing completion of this work on June 30, 2021, stating the firm "has completed the decontamination & stucco debris removal from the residence. . ." Further, there was asbestos abatement work performed: "decontamination of main stairwell & hallway from drywall dust. . ."

Another invoice dated June 17, 2021 shows completion of sampling and a "restoration report and inspection" took place on June 8, 2021. The landlord drew attention to the Analysis Report section of the document where it shows: "Chrysotile – 1%".

The landlord also presented an email from the tenant to the landlord dated August 11. This is the tenant reporting on their call to a staff member from the city, who clarified for the tenant that "it's safe to use since the results of the testing showed less than 1% asbestos." The tenant noted nothing had been fixed, with only tape covering the hole created by the handyman. This was "now three months that this portion of my rental suite has been made unavailable to me."

Another undated message shows the city notified the landlord they need a building permit for alterations. This includes removal of hazardous materials. At that time there was no permit granted. The landlord forwarded this message to another city representative, noting: "A building permit is not required as: there were no alterations to the building AND there was no removal of hazardous materials. Not required. AND there was no new work to replace finishes. AND there has not been any additional work done." The landlord forwarded this on to a city environmental protection officer.

The landlord presented in the hearing that they did not get a response from the environmental protection officer after their query to them on September 9. They were "told by the city to not look over these issues until they tell [the landlord] to." The landlord maintained there is no asbestos in the stairwell location as per the Analysis Report. As it stands, with the last communication being September 9, the landlord was waiting for clarification from the city in order to proceed with renovations. This is with the landlord's understanding that a permit is not required.

In response to what the landlord stated in the hearing, the tenant drew my attention to sections of the Analysis Report that they interpret as advising against use of the area. These are the final two points listed below. This Analysis Report states the following:

- estimated year of construction: 1910
- Asbestos-containing materials were present within areas of the building sampled and tested during our inspection.
- Restoration plans are set to repair small damaged areas of plaster and drywall in the main stairwell . . .
- Patch compound applied to plaster in the main stairwell has tested positive for 1% chrysotile asbestos.
- WorkSafe BC Enhanced-Moderate to High-Risk work procedures must be followed for the safe and effective removal of asbestos-containing patch compound.
- Access to this area should be limited to trained abatement workers wearing appropriate personal protective equipment
- The carpet covering the stairwell and landings has become contaminated with asbestos-containing debris and should be included in the abatement.

### Analysis

The *Act* s. 32 sets out a landlord's obligation to repair and maintain residential property. This is in a state that "complies with the health, safety and housing standards required by law."

Given the findings of the Analysis Report, I find the landlord is positively obligated to repair and maintain the stairwell section of the residential property. This is to put that discrete area of the property to a state that s. 32 mandates: compliance with the health, safety and housing standards required by law. Any access by any of the residents at that property mandates that this work be completed in line with the *Act*.

I find the landlord has substantially started this work. On June 8, 2021 the landlord hired a specialty firm to perform an inspection of the area. I am satisfied the landlord has accepted the findings of the Analysis Report and undertaken preliminary work in earnest.

After this, on July 2, 2021, a restoration firm performed some asbestos abatement work. This is "decontamination of main stairwell & hallway from drywall dust" as provided on the certificate in the evidence. I find this shows the landlord was attentive to the issue, and ensured some work was performed once the hazard was identified. This portion of the work was the immediate clean-up of harmful drywall dust in the area.

As stated by the landlord in the hearing, they “would like to get it done.” I find the landlord is working toward completion of the remediation and renovation of the stairwell area. The status as of the date of the hearing was the landlord awaiting word from the city on the need for a permit to proceed on renovations. The landlord shared their stated opinion to another city official that a building permit is not required; however, I find the landlord has not proceeded on work without said permit, or confirmation that a permit is or is not needed. I find this is reasonable in the circumstances.

I find the area in question does not pose an immediate hazard to the tenant here, or other residents in the building. Given the age and character of the building, it is a sensitive operation and I find the landlord has not been recalcitrant or careless. On this, I note the invoices and communication with city officials which the landlord provided. I give more weight to this evidence than what the tenant described as the landlord’s lack of response to other repair issues at the residential property. I also note the landlord was timely in providing a secure locked entry to the tenant’s unit, as an alternate entry/exit to the stairwell.

With a substantial portion of the preliminary work completed prior to a permit being issued, I order the landlord to continue with this project and complete renovations. This is mandated by s. 32 of the *Act* for this area of the residential property that is accessible by tenants. They must resolve the permit issue forthwith, and then proceed with needed work.

On the issue of compensation, under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. The *Act* s. 65 grants authority to make an order granting rent reduction.

. . . 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:

(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;

For this consideration, I find there was a loss of access to a part of the residential property. I have considered the impact of said loss of this access, and find the tenant is not entitled to compensation or a rent reduction for this reason. While the tenant has proven their point with respect to the need for repairs, I find the tenant has not presented compelling evidence of the value of the loss of access to them.

The stairwell is merely one path of two leading to the tenant's rental unit. The landlord provided a locked entry/exit for the tenant when the need arose. I find what the tenant raised as the space being convenient for them to keep their bicycle does not constitute a fundamental part of the tenancy agreement, as would something more tangible such as parking space for a vehicle.

I find there was a minimal reduction in the value of the tenancy agreement. This is for the one-week period after the tenant discovered they could not use the stairwell after the handyman's tentative identification of asbestos in that area. The tenant was without a locked door to their rental unit until the landlord provided a lock for the tenant's patio door on May 21. This is a seven-day timeframe. I reduce the tenant's rent by 50% for this period of time only, when lack of locked door to the rental unit significantly reduced the value of the tenancy agreement. I grant a one-time reduction in rent of \$260, based on 50% of the per diem rent being \$73.66.

While the interruption to the tenant's basic security item of a locked door does constitute a reduction in the value of the tenancy agreement, the ongoing lack of access or use of the stairwell does not. This does not equate to a portion of the rental unit itself being unlivable; nor does it equate to lack of a service or facility to the tenant. I find this presents an inconvenience to the tenant. The tenant did not provide sufficient evidence to show the rental unit has been diminished in size, quality, and personal enjoyment. As such, they have not amply shown the value of the loss to them. Moreover, I find the claim for one-half month rent, and one-quarter month's rent ongoing, does not represent an effort at minimizing the loss to them. This is an important consideration as set out in s. 7(2) of the *Act*.

The tenant's entry to the rental unit has been re-routed. I make no other award for rent reduction based on the submissions and the evidence of the tenant here. Similarly, I make no award for the tenant's claim for compensation.

As the tenant was moderately successful in this application, I find the tenant is entitled to recover \$50 of the filing fee they paid for this Application.

### Conclusion

I order the landlord to complete renovations and remediation of the affected stairwell area by the earliest possible completion date.

I find the tenant is entitled to a rent reduction in the amount of \$310. This includes both a past rent reduction for the period specified above, as well as recovery of a portion of the filing fee. I authorize the tenant to withhold this amount from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 25, 2021

---

Residential Tenancy Branch