



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR // OPU-DR, MNU-DR, FFL // MNDCT, RP, PSF, RR

### Introduction

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord applied for:

- an order of possession for non-payment of utilities pursuant to section 55;
- a monetary order for unpaid utilities in the amount of \$288.19 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant submitted two applications seeking:

- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- an order that the landlord make repairs to the rental unit pursuant to section 32;
- an order that the landlord provide services or facilities required by the tenancy agreement or by law pursuant to section 27; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,570.00 pursuant to section 67.

This matter was reconvened from a prior hearing on January 28, 2022. I issued an interim decision setting out the reasons for the adjournment that same date (the “**Interim Decision**”). This decision should be read in conjunction with the Interim Decision.

In the Interim Decision, I ordered the cancellation of the Notice and found that the tenancy shall continue. I adjourned the balance of the tenant’s issues and the landlord’s application for a monetary order for unpaid utilities to the present hearing.

The tenant and the landlord's agent, OC, attended the reconvened hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### **Preliminary Issue – Tenant's Receipt of the Interim Decision**

The tenant stated he did not receive a copy of the Interim Decision until late March. The Residential Tenancy Branch's internal system records indicate that a copy of the Interim Decision was mailed to the tenant on January 31, 2022, and again on March 21, 2022 following the tenant's request. Nevertheless, the tenant confirmed he was ready to proceed with this hearing.

### **Preliminary Issue – Resolution of Landlord's Claim for Unpaid Utilities**

In the Interim Decision, I had recorded the parties' agreement to attend an in-person meeting at the rental unit on February 2, 2022.

OC testified he met with the tenant based on the Interim Decision and resolved the issue of unpaid utilities. The tenant submitted a receipt dated March 1, 2022 as confirmation of payment for the utility invoices he received on February 2, 2022.

Based on the above, I find the parties have already resolved the matter of unpaid utilities. As it is no longer necessary to adjudicate this portion of the landlord's claim, and given that I have already declined to grant the landlord an order of possession, I dismiss the landlord's application without leave to reapply.

### **Preliminary Issue – Amendment of Tenant's Application**

The tenant submitted an amendment of his application to the Residential Tenancy Branch on April 4, 2022. The tenant amended his application to include:

- the addition of a request for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided in the amount of \$681, pursuant to section 65; and
- an increase of the tenant's monetary claims by \$5,100 (from \$1,570 to \$6,670).

During the hearing, the tenant clarified he intended to seek a rent reduction *to* \$681 per month (a \$600 reduction on a monthly rent of \$1,281), rather than a reduction *of* \$681.

The tenant stated the reduction of \$600 per month corresponds to his complaints

regarding a lack of heat in the rental unit and noise from his upstairs neighbours. The tenant also submitted a revised monetary worksheet breaking down the additional \$5,100 sought.

OC confirmed he received the tenant's amended application materials on April 7, 2022. OC stated the issues are similar to those in the tenant's original application, and that only the amounts have increased.

Since OC was prepared to address the issues raised by the amendments on behalf of the landlord, I allowed the tenant to proceed with his amended application.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order that the landlord make repairs to the rental unit;
- 2) an order that the landlord provide services or facilities;
- 3) an order to allow the tenant to reduce rent by \$600 per month for repairs, services or facilities agreed upon but not provided; and
- 4) a monetary order of \$6,670 for compensation for damage or loss?

### **Background and Evidence**

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the tenant's applications and my findings are set out below.

The tenancy agreement submitted by the landlord indicates the tenancy commenced on February 1, 2018. The residential property is a single-detached home. The rental unit is a basement suite. The upper level is occupied by other tenants of the landlord. Monthly rent is currently \$1,281. At the start of the tenancy the tenant paid the landlord a security deposit of \$625, which the landlord continues to hold in trust for the tenant.

Based upon the tenant's application, submissions, and revised monetary worksheet, I understand the Tenant's monetary claims to be as follows:

| Description   | Calculation                    | Amount         |
|---|--------------------------------|----------------|
| Not being able to use dryer   | 10 months × \$50.00 per month  | \$500          |
| Loud noises and banging from upstairs   | 15 months × \$100.00 per month | \$1,500        |
| Leaking roof in front of bedroom and gate   | 15 months × \$20.00 per month  | \$300          |
| Gate slamming open and shut   | 15 months × \$20.00 per month  | \$300          |
| No heat   | 5 months × \$500.00 per month  | \$2,500        |
| Being unable to use the dryer due to landlord's willful neglect. Loss of sleep, insomnia, fear and trauma due to landlord's other tenants upstairs' erratic violent banging on walls, door, cabinets, drawers and stomping on stairs & floors. Special and aggravated damages | Unspecified calculation        | \$1,570        |
| <b>Total</b>  |                                | <b>\$6,670</b> |

The tenant testified that between December 2020 to October 2021, he was unable to use the dryer in the rental unit due to the accumulation of lint in the dryer for over 3 years. The tenant stated the dryer had a lint trap which can be cleaned, but the exhaust vent needed to be professionally serviced at least once a year, and this was not done. The tenant stated the dryer did not work well and took hours to dry a load. The tenant further testified he felt the dryer was in a hazardous condition, and that he did not want to chance sparking a fire by using it. The tenant submitted a photo of the dryer vent. The tenant argued that it was the landlord's responsibility to undertake such repairs.

As a result of the inability to use the dryer, as stated above, the tenant seeks a retroactive rent reduction of \$50 per month for ten months (December 2020 to October 2021).

The tenant testified he often hears loud banging from the upstairs tenants at night and in the morning. The tenant explained his bedroom is located underneath the kitchen of the upper unit, and that he is frequently disturbed by the upstairs tenants slamming cabinets and drawers. The tenant testified he has written to the landlord multiple times about his concerns. In support of his testimony, the tenant submitted copies of letters to the landlord dated August 15, 2021 and March 12, 2022.

As compensation for the loss of quiet enjoyment, the tenant seeks a monetary order of \$1,500 (representing compensation of \$100 per month for 15 months).

The tenant also submitted photo evidence of what he describes as a “leaking roof”. The tenant stated the roof of the rental unit was leaking in two places. In the first place, the leak creates a stream of water in front of the gate, like a small waterfall in front of the door. In the second place, water leaks from the outside of the tenant’s bedroom window, and the noise keeps the tenant up at night. The tenant confirmed that water does not leak from the roof into the rental unit itself.

As compensation for the loss of quiet enjoyment, the tenant seeks a monetary order of \$300 (representing compensation of \$20 per month for 15 months).

Regarding the front gate, the tenant described it as having a rusted latch, causing it to swing open and slam shut with the wind. The tenant submitted a photograph of the latch dated April 2022 in which the latch appears functional, but rusted. The tenant testified it was a huge hassle having to go outside and close the gate, and that windy nights were “unbearable” due to the noise caused by the gate slamming.

As compensation for the loss of quiet enjoyment, the tenant seeks a monetary order of \$300 (representing compensation of \$20 per month for 15 months).

Finally, the tenant testified there has been a problem with the heat in the rental unit since January 2022. The tenant stated on January 3, 2022 and January 4, 2022, he sent frantic letters to the landlord asking for the heat to be fixed. The tenant stated there was no contact from the landlord for another week and a half. The tenant testified the landlord sent technicians to inspect the furnace twice, but these visits did not fix the problem. The tenant testified the heat setting has been on “maximum” for the past 5 to 6 months, yet the temperature will not go above “medium”. The tenant stated the landlord’s technicians were able to resolve issues with the furnace in the past. As a result of the ongoing heat problems, as stated above, the tenant seeks a retroactive rent reduction of \$500 per month for five months (January to May 2022).

OC testified they received the tenant’s complaints about the forgoing issues only recently, when they sent the Notice to the tenant regarding unpaid utilities. OC argued there is no physical evidence that the tenant had reported his complaints to the landlord 15 months ago. OC denied they had received a copy of the tenant’s complaint letter dated August 15, 2021.

Regarding the dryer, OC argued that the tenant also has an obligation to clean the lint. OC testified they sent a contractor to service the dryer vent in October 2021 and that in

doing so met the landlord's obligation to repair and maintain the rental unit. The landlord's submitted evidence includes a \$414.00 dryer maintenance invoice dated October 22, 2021. OC stated he believed cleaning the dryer vent every 2 to 3 years is normal and reasonable.

With respect to the tenant's noise complaint, OC pointed out that the tenant has not submitted any recordings. OC testified he first heard about the noise complaint only recently and had checked with the upstairs tenants. OC stated the upstairs tenants will be moving out at the end of May 2022.

OC testified both the roof and the front gate have already been repaired by the landlord's contractor. OC stated he received an invoice for the repairs and was told that everything has been fixed. The landlord submitted an invoice dated March 10, 2022 for \$630 with the following description:

main door top side  
reinstall gutter and down pipe  
repair roof tile and leaking

OC stated he was told by the landlord's contractor that the furnace and boiler are working fine. OC confirmed they sent their contractor to fix the furnace on two occasions. OC further testified that the upstairs tenants say the heat is working. The landlord submitted two invoices for furnace repair and maintenance:

- a \$712.90 invoice dated December 30, 2021 for "service call", "replaced one zone valve", and "flushing the system"; and
- a \$356.95 invoice dated February 4, 2022 for "service call" and "replacement zone valve".

OC argued that the landlord has adequately repaired the furnace and that the tenant has failed to provide sufficient evidence to support his claims.

## **Analysis**

Rule 6.6 of the Rules of Procedure states:

### **6.6 The standard of proof and onus of proof**

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 their case is on the person making the claim. In most circumstances this is the person making the application.

In this case, the tenant as the applicant bears the onus of proving each of his claims on a balance of probabilities.

1. Is the tenant entitled to an order that the landlord make repairs to the rental unit?

Under the tenant's claim for repairs in his application, the tenant states:

The front outside gate latch is broken causing it to smash loudly by the wind.  
Roof is leaking in front of said gate getting me wet and keeping me up at night.  
Drawers and cabinets upstairs are loose, get slammed extremely loudly at all hours/middle of the night.

Based on this statement, I understand the tenant is seeking repairs relating to:

- a. the broken front gate latch;
- b. the leaking roof; and
- c. drawer stoppers and cabinet dampers for the upstairs suite.

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.

Section 1 of the Act defines "residential property" as:

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,

- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

In this case, I find the landlord has an obligation under section 32 of the Act to maintain the areas described by the tenant—the front gate, the roof, and the upper suite—as they are part of the residential property in which the rental unit is situated.

Regarding the front gate and roof, I find on a balance of probabilities that these items are currently in a state of decoration and repair that comply the requirements of section 32 of the Act. In coming to this conclusion, I am persuaded by OC's testimony and the invoice dated March 10, 2022 submitted by the landlord, which indicate that repairs have already been made to the front gate and roof. In addition, I have reviewed the photograph of the front gate submitted by the tenant, which is stated to have been taken in April 2022, after the repairs completed by the landlord. I note the latch appears to be somewhat rusted. However, I am unable to conclude, from reviewing this photograph, that the front gate latch is broken or unusable.

Based on the above, I decline to make any repair orders with respect to the front gate or the roof.

Regarding the tenant's request for the landlord to install drawer stoppers and cabinet dampers in the upstairs suite, I find that this claim is more akin to a request for an upgrade rather than a request to maintain and repair. I find there is insufficient evidence before me to suggest that the drawers and cabinets are in a state which does not comply with health, safety and housing standards, or otherwise render the rental unit below unsuitable for occupation.

In situations where occupants live in suites in the same single detached home, regular household noises are to be expected and are not unreasonable. It is not uncommon for tenants in basement suites to be disturbed by noises coming from their upstairs neighbour. However, given the nature of the living arrangement, such disturbances are not in and of themselves "unreasonable". In the absence of evidence establishing that the noises coming from the upper unit are unreasonable (such as video or audio recordings showing unreasonable frequency, volume, or timing), I decline to find that any noises caused by cabinets or drawers closing or slamming is unreasonable and caused the rental unit to be unsuitable for occupation.

Accordingly, I decline to make any repair order with respect to the drawers and cabinets in the upstairs suite.

2. Is the tenant entitled to an order that the landlord provide services or facilities?

Section 27 of the Act states:

**Terminating or restricting services or facilities**

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(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.

Under the tenant's claim for the landlord to provide services or facilities as part of his application, the tenant states:

Dryer vent hasn't been serviced in well over 3 years rendering it unsafe and unfit for use.

In this case, I find that use of the dryer is included in the rent pursuant to paragraph 5(a) of the tenancy agreement. However, based on the tenant's own testimony, I find the landlord has not terminated or restricted the tenant's access to the dryer. I find the tenant stopped using the dryer for a period of time because he believed the dryer to be unsafe or unfit for use. I note the tenant's evidence was that the dryer did not work well, so he stopped using it. In any event, I find the landlord had the dryer serviced in October 2021 and that the tenant currently has access to the dryer.

Based on the foregoing, I find that it is not necessary for me to order the landlord to provide the tenant with access to the dryer. Therefore, the tenant's claim under this part is dismissed.

3. Is the tenant entitled to reduce rent for repairs, services or facilities not provided?

Sections 65(1)(b) and 65(1)(f) of the Act state:

**Director's orders: breach of Act, regulations or tenancy agreement**

65 (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; [...]

In addition to the monetary order representing a retroactive rent reduction (see below) the tenant is also seeking an ongoing rent reduction of \$600. I cannot say precisely how the tenant calculated this amount, but I understand that the amount roughly totals the combined amount of retroactive rent reduction set out above (\$500 + \$100 + \$50 + \$20 + \$20). I will proceed on this basis.

The tenant seeks a rent reduction of \$500 per month due to lack of heat in the unit.

I find I am unable to conclude, on a balance of probabilities, that there has been a lack of heat in the rental unit so as to reduce the value of the tenancy. While the tenant testified that temperatures in the rental unit do not go above "medium", the tenant has not provided any actual temperature measurements or documentary evidence in support of this claim. In contrast, the landlord has submitted an invoice to show that the furnace for the rental unit was serviced in February 2022, which is not disputed by the tenant. I accept OC's testimony that they were not advised of any problems with the furnace by the contractors who performed the maintenance work. I find that the landlord

has made reasonable efforts to investigate the tenant's complaints and to maintain the furnace.

For similar reasons, I decline to order that any repairs be made to the furnace.

As stated above, I do not find that the tenant was *unreasonably* disturbed by the upper tenants. As such, I decline to order an ongoing rent reduction of \$100 for failure to install stoppers or dampers.

As stated above, the tenant has access to the dryer, and the landlord had it serviced in October 2021. There is no evidence before that the dryer is presently unusable. As such I decline to order an ongoing rent reduction of \$50 for failure to repair or maintain the dryer.

As stated above, the landlord testified that he hired a contractor to repair the leaks in the roof and the gate latch. I accept this testimony. The tenant has not provided any evidence that the noises caused by the leaks continued after these repairs. As such, I decline to order an ongoing rent reduction of \$20.

The tenant provided a photograph of a slightly rusty gate latch. I cannot say whether the latch is non-functional. As stated above, the tenant bears the burden of proof. He has failed to provide sufficient evidence that the gate continues to cause him a disturbance or has not been adequately repaired. As such, I decline to order an ongoing rent reduction of \$20.

Accordingly, I find the tenant is not entitled to an order for rent reduction.

4. Is the tenant entitled to a monetary order for compensation for damage or loss?

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.

I have already described the breaches of the Act the tenant alleges and will not repeat them here.

For the reasons stated above, I find that the tenant has failed to prove it is more likely than not that the landlord failed to repair or maintain the furnace. The tenant is not entitled to any compensation on that ground.

Similarly, the tenant has failed to show that the disturbances caused by the upper tenants were *unreasonable* disturbances, rising to the level of a breach of section 28 of the Act. As such, the tenant is not entitled to any compensation on that ground.

I accept that the landlord serviced the tenant's dryer in October 2021. However, such servicing does not necessarily imply that the dryer was unusable or inoperable prior. The tenant has not provided any corroboration of his assertion that the dryer did not "dry properly". Additionally, I do not find that the tenant has provided sufficient evidence to support his assertion that the landlord must clean the dryer's lint trap or vent on an annual basis (I note that RTB Policy Guideline 1 states only that "the landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals").

As such, I find that the tenant has failed to demonstrate that the landlord breached a section 32 of the Act. As such the tenant is not entitled to any compensation on this ground.

The landlord did not deny that the roof leaked causing water to cascade to the ground which disturbed the tenant, or that the gate's latch was faulty causing it to slam shut when it was windy. Indeed, the fact that it paid over \$600 to repair these things indicates that the repairs were required.

Accordingly, I am satisfied that the tenant has shown that the landlord has breached section 32 of the Act by failing to adequately maintain these items. However, I am not satisfied based on the evidence provided by the tenant, of the length of time that these deficiencies existed (or that the landlord could have reasonably known about them). There is nothing in the documentary evidence to support the tenant's claim that these issues were ongoing for 15 months. Furthermore, I am not satisfied that the tenant has

demonstrated that he suffered a quantifiable loss as a result of this breach. I cannot say that the slamming of a gate or noise caused by pouring water constitutes an unreasonable disturbance.

In the circumstances, I find that nominal damages are appropriate. RTB Policy Guideline 16 states:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As the tenant has not been able to prove that he has suffered a loss, but he has been able to prove that the landlord breached the Act, I find that combined nominal damages of \$200 are appropriate for landlord's failures.

In his application, the tenant also makes a claim for “special and aggravated damages”.

RTB Policy Guideline 16 states:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In this case, I do not find that an award of aggravated damages would be appropriate. The tenant could have been awarded for any loss suffered by way of a rent reduction (either retroactive or forgoing). Additionally, the conduct of the landlord did not rise to such a level that aggravated damages would be appropriate. As stated above, I do not find that the landlord has caused the tenant to suffer any damages or loss, other than nominal damage.

## **Conclusion**

Pursuant to section 67 of the Act, I order the landlord to pay the tenant \$200 in nominal damages.

Pursuant to sections 72(2) of the Act, the tenant may deduct \$200 from any one future month's rent.

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 26, 2022

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Residential Tenancy Branch