



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FULTON PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## DECISION

**Dispute Codes**      RP, OLC, PSF, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants January 15, 2022 (the “Application”). The Tenants applied as follows:

- For a repair order
- For an order that the Landlord comply with the *Residential Tenancy Act* (the “Act”), *Residential Tenancy Regulation* (the “Regulations”) and/or the tenancy agreement
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- For reimbursement for the filing fee

This matter came before me April 12, 2022, and an Interim Decision was issued April 13, 2022. This Decision should be read with the Interim Decision. Pursuant to the Interim Decision, I allowed the Application to be amended to add a request for compensation.

The reconvened hearing occurred July 26, 2022. The Tenants appeared at the hearing. A.L. and B.M. (the “Agents”) appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Service was addressed in the Interim Decision. Further documents were submitted by the parties prior to the reconvened hearing. I confirmed service of these further

documents at the reconvened hearing and the parties did not raise any issues with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

I note that in their written materials, the Tenants ask questions, request information and request orders that are outside the scope of the Application and my role or jurisdiction. Further, the Tenants raise issues not addressed at the hearings. I have only decided the issues addressed at the hearings.

### **Issues to be Decided**

1. Are the Tenants entitled to a repair order?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act, Regulations* and/or the tenancy agreement?
3. Are the Tenants entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?
4. Are the Tenants entitled to compensation?
5. Are the Tenants entitled to reimbursement for the filing fee?

### **Background and Evidence**

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started June 01, 2009. The parties agreed rent is currently \$825.00 per month.

#### ***1. Are the Tenants entitled to a repair order?***

The Tenants sought a repair order in relation to the following:

- Common area paint
- Common area carpet
- Elevator

- Intercom

In their written materials, the Tenants ask for an order that includes a due date by which the above must be repaired and a penalty for the Landlord if the repairs are not completed by the due date.

#### *Common area paint*

The Tenants testified that the common areas of the rental unit building need painting and relied on photos in evidence.

At the April hearing, the Agents said they are committed to paint the common areas of the building. The Agents said they would arrange for someone to complete the painting in three to six months, and that it will take three to four weeks to complete. B.M. testified that the paint is fine and just requires some touch-ups.

#### *Common area carpet*

The Tenants take issue with the age and condition of the common area carpet. The Tenants relied on photos in evidence, showing the condition of the carpet, as well as their attached notes. The Tenants also submit that the carpet should be replaced with a different type of flooring. The Tenants acknowledged the carpet is vacuumed once a week.

The Agents testified that sections of the carpet are around 15 years old but have been maintained. B.M. testified that parts of the common area carpet were replaced only six or seven years ago. B.M. agreed there is a piece of carpet “in the north area” that needs replacing; however, said it is hard to find someone to do this because it is a small job. The Agents testified that the carpets are vacuumed once a week.

#### *Elevator*

The Tenants testified that the elevator in the building is currently working; however, did not work in the past and may stop working in the future. The Tenants sought an order that the elevator be replaced by October 30, 2022. The Tenants testified that they have been trapped in the elevator in the past and that the emergency button does not work. The Tenants relied on their written materials for this issue. The written materials clearly show there is an issue with the elevator malfunctioning at times. The Tenants

submitted letters from the Landlord advising in November of 2021 that the Landlord had entered an agreement to replace the elevator, which replacement was expected to start in May of 2022.

The Agents agreed the elevator needs to be replaced; however, the Agents would not agree to replacing it by October 30, 2022, because they said it is out of their control when the elevator is replaced. The Agents testified that the elevator is currently working. The Agents acknowledge in their written submissions that the elevator has malfunctioned or shut down in the past. The Agents state that B.M. addresses any issues with the elevator immediately. B.M. testified that a new elevator has been ordered; however, the Landlord is still waiting for it to arrive. A.L. testified that the timeline for getting the new elevator is completely out of the Landlord's control. A.L. testified that the Landlord has paid a non-refundable deposit for the elevator. A.L. testified that the company delivering the elevator says it will be delivered in September. A.L. suggested that a more accurate timeline to expect the elevator parts is November. A.L. testified that it will take 12 to 16 weeks to replace the elevator once the parts arrive. A.L. testified that the Landlord is committed to having the elevator replaced and are simply waiting for the parts.

The Landlord submitted evidence that they have a contract with a company to replace the elevator, which replacement is expected to start in September of 2022 and take 20 to 22 weeks. The letters from the company state that they are still repairing the elevator as required.

### *Intercom*

The Tenants testified that the intercom has not worked for the past five years. The Tenants testified that they can no longer buzz people up to their rental unit through the intercom and therefore they have to go downstairs to let visitors or delivery persons into the building. The Tenants testified that the intercom is 55 years old and needs to be replaced.

The Agents agreed the intercom does not work properly at the base. The Agents testified that they have tried to find someone to repair the intercom but have not been able to. The Agents said they are committed to repairing the intercom if they can find a company that can service the intercom.

- 2. Are the Tenants entitled to an order that the Landlord comply with the Act, Regulations and/or the tenancy agreement?**
- 3. Are the Tenants entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?**

The Tenants submitted an outline of their requests for an order that the Landlord comply with the *Act, Regulations* and/or the tenancy agreement and provide services or facilities required by the tenancy agreement or law. The outline seeks the following:

- Repair of the Tenants' balcony
- A complete re-pipe of the building
- Common area painting
- Replacement of common area carpet
- Painting the parkade walls white and floors grey
- Bug screens installed in the windows of the rental unit
- Ongoing pest control in the building
- A fourth coin-pay washer and dryer installed

#### *Repair of the Tenants' balcony*

The Tenants relied on their written materials for this issue. The written materials state that the Tenants' balcony needs to be re-sheathed, with new flashings and fascia boards installed. The Tenants state that the balcony needs a weld on vinyl deck applied over top. The Tenants state that the cedar panel on the balcony is rotten and needs to be replaced. The Tenants submitted a photo of their balcony.

The Agents testified that they had not heard of this balcony issue prior to the Application. The Agents said they will send someone to look at the balcony and repair it if required. The Agents said they need two months to have someone look at the balcony and complete any necessary repairs.

#### *A complete re-pipe of the building*

The Tenants take the position that the piping throughout the building needs to be replaced. The Tenants state that the piping needs to be replaced to prevent flooding in the building. The Tenants sought a target date from the Landlord for a complete re-pipe of the building.

The Agents testified that re-piping the building is in their plan but will not be done until the elevator has been replaced. The Agents agreed re-piping of the building needs to be done but stated that this is not an urgent issue.

*Common area painting*

*Replacement of common area carpet*

These two issues were addressed by the parties as set out above.

*Painting the parkade walls white and floors grey*

The Tenants said it would be nice to have the parkade walls painted white and the floors painted grey. The Tenants acknowledged the Landlord has not breached the *Act*, *Regulations* or tenancy agreement in this regard.

*Bug screens installed in the windows of the rental unit*

The Tenants said it would be nice to have screens on the windows of the rental unit to stop bugs from getting in. The Tenants acknowledged there were no screens on the windows at the start of the tenancy.

The Agents said there were no screens on the windows of the rental unit at the start of the tenancy and that the Tenants need to purchase screens themselves if they want them.

*Ongoing pest control in the building*

The Tenants testified that there is a mouse issue in the rental unit and building. The Tenants testified that pest control companies have not attended the building frequently enough to get rid of the mouse issue. The Tenants testified that the solutions attempted so far have not eradicated the mouse issue. The Tenants submitted surveys from other tenants of the building which support that there is a pest problem throughout the building. The Tenants submitted a photo to support there is a mouse issue in the rental unit and building.

The Agents testified that they have provided tenants with mouse traps to address the mouse issue. The Agents testified that the Tenants have refused to allow B.M. to enter

the rental unit and put out traps or similar devices. B.M. testified that the pest control company the Landlord uses has attended the rental unit building many times, around once every six months. B.M. testified that the Tenants have not been cooperative in relation to addressing the mouse issue in the rental unit.

The Landlord did not submit documentary evidence of having a pest control company attending the rental unit or building or addressing the pest issue on an ongoing basis.

*A fourth coin-pay washer and dryer installed*

The Tenants said it would be nice to have an extra washer and dryer in the rental unit building because sometimes the ones there break down. The Tenants submitted photos showing there are three washers and three dryers for use by tenants of the building.

A.L. testified that they had not heard of this issue prior to the Application but will look at whether another washer and/or dryer can be installed. B.M. testified that the plumbing will not allow for another washer and/or dryer to be installed and that they have the washers and dryers repaired when they break.

**4. Are the Tenants entitled to compensation?**

The Tenants sought the following compensation:

Item	Description	Amount
1	The intercom has not worked for 5 years (60 months x \$20.00)	\$1,200.00
2	Elevator has not worked for 45 days (45 days x \$20.00)	\$900.00
3	Common area not painted for 11 ½ years (60 months x \$5.00)	\$300.00
4	Carpets not replaced in over 17 years (60 months x \$5.00)	\$300.00
	<b>TOTAL</b>	<b>\$2,700.00</b>

The Tenants relied on their written materials for the compensation request and testified that, other than the elevator, none of the issues raised have been addressed. The Tenants stated that the rental unit and building are showing wear compared to when

they rented the unit 12 years ago and that the issues raised need to be addressed. The Tenants testified that it is inconvenient to have to walk down and let visitors and delivery persons into the building due to the intercom not working. The Tenants testified that it is also a problem when the elevator is not working, and they must walk up and down from the rental unit. The Tenants submitted materials showing the rental unit building is three stories. The Tenants submitted a signed letter from another tenant of the building, D.P.C., which confirms that the elevator has not worked for 45 days in the past.

The Agents relied on their written submissions for this issue. The Landlord takes the position that they have complied with their obligations under the *Act* and, even if I find a breach, the Tenants have failed to prove the loss or damage claimed. The Landlord submits that any award for the issues raised should be minimal. B.M. added that there are no major issues with the rental unit or building. A.L. disputed the Tenants' claim that the elevator has not worked for 45 days in the past. In their written submissions, the Landlord points out that there is access to all areas of the building without the elevator.

### **Analysis**

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#### ***1. Are the Tenants entitled to a repair order?***

The Landlord's obligations to maintain and repair the rental unit and building are set out in section 32 of the *Act* as follows:

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 62(3) of the *Act* states:

- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

#### *Common area paint*

I have reviewed the photos of the rental unit building and find the paint issue is simply a cosmetic issue. However, the Agents said they are committed to painting the common areas of the building and therefore agreed to do this. Given the agreement of the Agents, **I ORDER the Landlord to have the common areas of the building painted by November 30, 2022.** At this point, I decline to award the Tenants compensation if the Landlord does not comply with this Order because this is a cosmetic issue. However, if the Landlord does not comply with this Order, the Tenants can apply for further remedies at that point.

#### *Common area carpet*

I have reviewed the photos of the common area carpet. I accept areas of the carpet are dirty from use. I also accept areas of the carpet are worn. However, I find the issues with the carpet are cosmetic. I am not satisfied based on the evidence provided that the carpet has rips or tears such that there is a safety risk. I am not satisfied based on the evidence provided that the Landlord has breached section 32 of the *Act* in relation to the carpet, other than in relation to the “north area” of the carpet. B.M. acknowledged the “north area” of the carpet needs to be replaced and therefore **I ORDER the Landlord to replace the “north area” of the carpet referred to by November 30, 2022.** At this point, I decline to award the Tenants compensation if the Landlord does not comply with this Order because this is a cosmetic issue. However, if the Landlord does not comply with this Order, the Tenants can apply for further remedies at that point.

#### *Elevator*

There is no issue that the elevator in the building needs to be replaced because the parties agreed on this. I accept that the Landlord has taken all appropriate steps to have the elevator replaced based on the letters in evidence from the elevator company which show the Landlord has entered a contract for a new elevator and that the delay is

on the company's end. I decline to order the Landlord to replace the elevator by a specific date because I accept based on the letters in evidence that the date is outside of the Landlord's control at this point. Further, I accept that the elevator is currently working because the parties agreed on this. As well, I accept that the Landlord and elevator company are committed to repairing the elevator when issues arise because the letters from the company support this. I have also considered that the rental unit building is three stories and therefore the functionality of the elevator, while important, is not crucial. I find the remedy for the elevator issues at this point is compensation rather than an order that the Landlord replace the elevator by a specific date, which is outside of the Landlord's control.

### *Intercom*

I accept that the building intercom is not working properly and has not done so for five years because the parties agreed on this. The Tenants rented the rental unit with a functional intercom, and therefore this was part of their tenancy agreement. I find the Landlord has breached the tenancy agreement by allowing the intercom to fall into disrepair and not work for five years. I do not find the Landlord's excuse for not repairing the intercom compelling. If the Landlord cannot find a company to repair the intercom, the Landlord can install a new intercom. **I ORDER the Landlord to have the intercom repaired or replaces, such that the intercom works as it is supposed to, by November 30, 2022.** If the Landlord fails to comply with this Order, the Tenants can deduct \$10.00 per month from their rent for every month the intercom does not work as it is supposed to.

- 2. *Are the Tenants entitled to an order that the Landlord comply with the Act, Regulations and/or the tenancy agreement?***
- 3. *Are the Tenants entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?***

Section 62(3), set out above, applies to these issues as well.

The *Act* states the following in relation to services and 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.

*Repair of the Tenants' balcony*

I find this is a repair issue. I am not satisfied based on the evidence provided that repairs to the Tenants' balcony are required. The only evidence the Tenants provided to support their testimony is a photo of their balcony. I cannot tell from a photo what repairs are or are not required in relation to the balcony. I would expect the Tenants to have submitted compelling evidence, such as a report or assessment of the balcony by a qualified professional, stating the balcony requires repairs. Further, the Tenants do not seem to be clear about the difference between required repairs and improvements or upgrades and therefore I am not confident based on the evidence provided that the balcony in fact requires repairs.

However, the Agents agreed they would send someone to look at the balcony and repair it if required. Given this agreement, **I ORDER the Landlord to have a qualified professional assess the balcony and repair it, if necessary, by November 30, 2022.** At this point, I decline to award the Tenants compensation if the Landlord does not comply with this Order because the Tenants have failed to prove their balcony requires repair. However, if the Landlord does not comply with this Order, the Tenants can apply for further remedies at that point.

*A complete re-pipe of the building*

I find this is a repair issue. The Tenants have failed to provide compelling evidence that the building requires a complete re-pipe or that the Landlord has breached section 32 of the *Act* in this regard. The only evidence provided by the Tenants in relation to this issue are their own statements and possibly some statements from other tenants. I do not find this type of evidence sufficient to justify issuing an order that the Landlord completely re-pipe the building. In the absence of compelling evidence that the Landlord has breached section 32 of the *Act* in this regard, I dismiss this request without leave to re-apply.

*Common area painting*

*Replacement of common area carpet*

These two issues are addressed above.

*Painting the parkade walls white and floors grey*

I do not accept that the Landlord has breached the *Act*, *Regulations* or tenancy agreement in this regard. I find the Tenants are simply asking for improvements or upgrades that they would like to see versus issues that are a breach of the *Act*, *Regulations* or tenancy agreement. The Tenants are not entitled to improvements or upgrades of the rental unit or building, and this is not the purpose of this process. The purpose of this process is for tenants to obtain remedies for issues that affect their use of the rental unit or building and where there is a breach of the *Act*, *Regulations* or tenancy agreement. This request is dismissed without leave to re-apply.

*Bug screens installed in the windows of the rental unit*

Given there were no screens on the windows of the rental unit at the start of the tenancy, the Tenants are not now entitled to have the Landlord install screens. Again, the Tenants are seeking improvements or upgrades, which is not the purpose of this process.

*Ongoing pest control in the building*

I accept there is a mouse issue in the rental unit and building based on the testimony of the parties, the statements of other tenants in evidence and the photo in evidence. I find the mouse issue is a breach of section 32 of the *Act*. I find the Landlord is required to take appropriate steps to deal with the mouse issue. I am not satisfied the Landlord has taken any appropriate steps to deal with the mouse issue because the Landlord has not provided any compelling evidence of having an ongoing strategy to deal with the mouse issue. **Given this, I ORDER the Landlord to have qualified professionals attend the rental unit and building, assess the rodent issue and come up with a plan to remedy the rodent issue by November 30, 2022. I further order the Landlord to implement the plan and to continue to comply with the plan until there is no longer a rodent issue in the rental unit and building.** The Landlord should keep records of their compliance with this Order. If the Landlord does not comply with this Order, the Tenants can deduct \$20.00 per month from their rent until the Landlord does comply with the Order.

*A fourth coin-pay washer and dryer installed*

The building currently has three washers and three dryers for tenants use. I cannot find based on the evidence provided that the Landlord has breached the *Act*, *Regulations* or tenancy agreement in relation to the number of washers and dryers in the building. There is no evidence before me that there were more than three washers and three dryers in the building when the Tenants rented the unit. Nor is there evidence before me that three washers and three dryers is insufficient such that there is a breach of the *Act*, *Regulations* or tenancy agreement. I find the Tenants are again seeking improvements or upgrades to the rental unit building, which is not the purpose of this process.

**4. Are the Tenants entitled to compensation?**

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

### *Intercom*

As stated, I accept the intercom in the building has not worked for five years and that this is a breach of the tenancy agreement. I accept the Tenants must go downstairs to let visitors and delivery persons into the building due to the intercom not working. I accept that it is inconvenient for the Tenants to have to go downstairs to let visitors and delivery persons into the building because the whole purpose of an intercom is to prevent tenants from having to do this. Further, the Tenants rented the unit with an intercom, and it is reasonable for them to expect to have a working intercom. I do find the amount sought excessive considering the rent amount, fact that the intercom issue is inconvenient and not a crucial issue, and fact that the building is only three stories. Further, I find the Tenants should have sought a remedy for this issue prior to the five-year mark to mitigate their loss. In the circumstances, I award the Tenants \$5.00 per month for the five years the intercom has not been working. I find this amount reasonable given the length of time over which this issue has persisted. I acknowledge \$5.00 per month is less than the amount ordered if the Landlord does not repair or replace the intercom. I award the lower amount because this is the first time the Tenants have sought a remedy through the RTB whereas I find the higher amount appropriate if the Landlord allows this issue to continue. I award the Tenants \$300.00.

### *Elevator*

I accept the elevator has not worked for 45 days in the past based on the testimony of the Tenants, statement by tenant D.P.C. and acknowledgement by the Landlord that the elevator has malfunctioned and shut down in the past. I find the elevator not working is a breach of the tenancy agreement because the Tenants rented the unit in a building that had a working elevator. I accept that the elevator not working is an inconvenience to the Tenants given they then must walk up and down from the rental unit. I award the Tenants \$20.00 per month for the times the elevator has not worked. I find this amount reasonable considering the inconvenience caused by not having an elevator but also that this is a three-storey building and therefore the use of an elevator is not crucial. I also consider the rent amount. I award the Tenants \$30.00 for this issue.

### *Common area paint*

### *Common area carpet*

I decline to award the Tenants compensation for the age or condition of the common area paint and carpet because I am not satisfied based on the evidence provided that these issues are anything more than cosmetic issues. I am not satisfied based on the evidence provided that these issues have adversely affected the Tenants in any measurable way. These requests are dismissed without leave to re-apply.

### **5. *Are the Tenants entitled to reimbursement for the filing fee?***

Given the Tenants have been partially successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$430.00 and can deduct this from their next rent payment pursuant to section 72(2) of the *Act*.

### **Conclusion**

The Tenants are entitled to the Orders set out in the Decision and to \$430.00 in compensation, which the Tenants can deduct from their next rent payment.

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

Dated: August 25, 2022

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Residential Tenancy Branch