



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      RR, RP, LRE, LAT, OLC, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant to retroactively reduce rent for repairs, services or facilities agreed upon but not provided by \$5,610, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter was reconvened from a prior hearing on May 16, 2022. I issued an interim decision setting out the reasons for the adjournment on May 17, 2022 (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

The tenant's son ("**GM**") attended the hearing on her behalf. The tenant did not attend. The landlord was represented at the hearing by an agent ("**SB**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) a monetary order of \$5,610, representing a retroactive reduction of her monthly rent;
- 2) an order to the landlord to make repairs to the rental unit;
- 3) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is a ground-level, one-bedroom apartment. The rental unit has a small back patio which overlooks a parking area. The patio is raised above the parking area by roughly three feet and is enclosed on two sides with a metal railing (the third side is open to the neighboring patio but separated by a rock garden). A gate is installed in one

of the railings, so that the back patio may be accessed from the side of the apartment building.

The parties entered into a written tenancy agreement starting October 15, 2009. Monthly rent is currently \$813 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$300, which the landlord continues to hold in trust for the tenant.

The tenancy agreement lists the following services and amenities included with monthly rent:

- Heat
- Hot water
- Window coverings
- Stove/fridge
- Cablevision (surcharge)

GM testified that a number of repairs are required to be done to the rental unit, specifically:

- 1) Repair to the heating system
- 2) Repair to the ventilation in the bathroom
- 3) Strengthening of security to the back patio
- 4) Repairs to the walls, doors, and ceiling in the rental unit
- 5) Resecuring of the window blinds
- 6) Increasing the luminosity of the lighting in the house

I will address each of these briefly.

GM testified that the heating system in the rental unit has not worked properly since 2019. He testified that when the heating system is turned on “powdered metal” is blown out of the vents, as opposed to heat. He testified that the tenant has had to purchase electrical heaters to warm the rental unit, which she uses all of the time. GM stated that the tenant reported the issue to the landlord several times over the last five years, but nothing was done to fix the issue.

GM testified that the ventilation system in the bathroom is full of rust and mold, and that it spreads debris throughout the bathroom when it is turned on. He testified that the vent fan is not powerful enough to adequately ventilate the bathroom and that it needs to be repaired or replaced.

GM testified that on multiple occasions the tenant has had personal property stolen off the back patio, including, in 2017, a shopping cart that was full of groceries. He stated that the gate leading onto her patio only has a latch, which can be easily opened by any passerby, and that it does not have a functioning lock. He testified that the tenant has heard people on her back patio when she is inside the rental unit, and that this makes her feel insecure. He asks that the landlord install a lock on the gate and either install

bars on the interior of her windows or that the landlord raise the fence enclosing the patio so that the trespassers cannot enter the patio.

GM testified that the walls, doors, and ceiling in the rental unit need to be painted and refinished. The tenant submitted photographs of the bathroom walls which show unfinished, uneven plaster walls that appear to have been repaired at some point in the past, but not properly finished. The tenant also provided photographs of the walls and ceiling in the kitchen, dining room, and bedroom all of which show staining, blackening, and (in some cases) deteriorating paint. Additionally, he testified that there are some holes in the walls which she has covered up with tape.

GM stated that the rental unit had two major leaks during the course of the tenancy, and that the landlord took an unreasonable amount of time to address them (multiple weeks). He testified the landlord took over 24 hours to even attend the rental unit to stop the leaks. In the course of the repair of these leaks, the landlord made alterations to the walls of the rental unit. He testified that the landlord did an inadequate job repainting the walls after making the repairs and that the paint job was uneven.

He testified that the rental unit had never been fully repainted at any point during the tenancy.

GM testified that the interior doors are "atrocious" and that they are stained by the passage of time and need to be replaced. He stated that the staining cannot be cleaned off, and that the doors do not open or close properly due to the expansion of the wood. The tenant has arthritis and find it difficult to use the doors in their current state.

GM testified that the blinds in the living room have become detached from the ceiling and that they are now secured to the top of the window frame by tape. He testified that the tenant had requested many times that this issue be fixed, but the landlord had not done this.

GM testified that the lighting in the rental unit is very poor (and had been since the beginning of the tenancy) and needs to be upgraded to increase the luminosity.

GM testified that the stove only had one burner that worked for over a year and was not repaired until early 2022 despite the issue being reported immediately to the landlord.

GM testified that even though the tenant is charged for cable and internet by the landlord, the provider was changed against her will. He testified that the service was not user-friendly and for two years she was not able to use it at all due to this complexity.

The tenant seeks a retroactive rent reduction of \$85 per month from 2017 to the date of the first hearing. GM stated that this amount was arrived at because the tenant had to purchase two heaters in 2017 to deal with the lack of heat in the rental unit (at a cost of

roughly \$200) and that the use of these heaters adds approximately \$20 per month to her hydro bill.

Additionally, for two years (all of 2018 and 2019), GM argued, the tenant paid \$35 per month for internet and cable, which she “could not use” and which was not reliable. He testified that the tenant was responsible for paying the fees to switch between service providers. He did not provide any documents supporting the allegation that the tenant incurred this cost.

GM stated that the tenant also seeks a rent reduction due to the landlord’s failure to provide a secure back patio to the tenant.

### Tenant’s Witnesses

The tenant called two witnesses in support of her application.

The first, HH, is a family friend of the tenant and has known her for over 30 years. HH testified that the heating system does not work properly and that emits black residue from the vents that stain the walls of the rental unit. She testified that she and the tenant have filled out multiple forms for the repair of the heating system over the years, and provided these forms to the landlord, but that the landlord has not taken any steps to address the issue.

HH testified that the back patio of the rental unit is not secure, and that anyone can walk onto the patio from off the street. She testified that she has heard people stepping across the gravel that separates the tenant’s patio from her neighbour’s patio, and that the tenant has shown her plants on her patio that have been disturbed by trespassers. She confirmed that the tenant has had items stolen from the patio but stated that no one had broken into the interior of the rental unit. HH observed that the tenant places a wooden block along the interior base of the patio door as an added security measure to prevent it from being slid open from the outside.

HH testified that the landlord did not repair a major leak in the kitchen on a timely fashion. She testified that the landlord took weeks to repair it and that the work was done in fits and starts. Additionally, HH confirmed that the lighting throughout in the rental unit is dim, and that the living room does not have a light fixture. She testified that this makes it difficult to see in the living room.

HH testified that the stove only had one operation burner for over a year. She testified that she reported it to the landlord and that it took them a year to repair the problem.

The tenant’s second witness, SF, has known the tenant since 2014 and is the tenant’s in-home caregiver. He testified that the tenant’s internet and cable provider (for which she pays for) was changed by the landlord against her will from Shaw to Telus and that the Telus service was unreliable and not user friendly.

SF testified that the heating system was not working properly for the last five years, and it spews out metallic dust which stains the walls and ceiling. He confirmed that the stove did not work for over a year.

SF testified that the lighting in the kitchen and dining room is not sufficient and that the outside patio is not secured and the fence enclosing it needs to be higher.

### Landlord's Evidence

SB testified that the landlord has instituted a policy whereby tenants in the residential property can make repair requests.

She testified that the landlord's records show that the tenant has used this process seven times during the tenancy, the landlord responded to these requests each time. In support of this, the landlord submitted into evidence notices of entry into the rental unit which were delivered to the rental unit.

SB provided a timeline for repairs done to the rental unit since 2018, as follows:

- Nov 16, 21. Notice for wall repairs
- Nov 2, 21. AC 104 ceiling leaking. Oct 19 was fixed and ceiling still open. emailed [redacted] for repairs Nov 2
- Oct 26, 21. Notice for piping repairs
- Oct 19, 21. leaking on ceiling bedroom
- Oct 26, 21. water shut off. Notice for repairs
- July 22, 20. Replacement of smoke alarm
- Feb 27, 28 - March 1, 19. Suite repairs after annual inspections
- Sep 26, 18. Bathroom Ceiling repairs

She testified that the landlord has no record have ever having received a request for repairs to the rental unit from October 2021 to April 2022.

SB stated that the landlord had no record of the tenant making a request for repairs to the heating system in the rental unit or that the heating system was ejecting debris or powdered metal from the vents. She stated that the landlord takes no position on the tenant's request for these repairs.

SB stated that the landlord accepts responsibility for repairing the walls and ceiling of the rental unit. However, she stated that the repairs to the window blinds are the tenant's responsibility.

SB stated that she was unsure as to whether the repairs of the interior doors or the landlord's responsibility, but the landlord would be willing to look at the doors to see if they need to be repaired. She argued that the tenant is responsible for the light bulbs

inside the rental unit, and it is not the landlord's responsibility to install additional light fixtures in the unit.

SB stated that if the landlord installed a lock on the patio gate, this would present an issue through other tenants who use the gate to access their patios. While she did not explicitly say as much, from this comment I infer that SB takes the position that occupants of the units who have patios adjacent to the tenants have a right to travel across the tenant's patio to access their own.

SB stated that it is not the landlord's responsibility to ensure that items are not stolen from the tenant's patio. Rather it is the tenant's responsibility not to leave items out on the patio that could be stolen. She did not believe that the landlord should be responsible for installing a raised fence or for installing bars on the windows of the rental unit.

SB denied that the tenant had to wait over a year to have her stove repaired. Rather, she stated that as soon as the landlord learned of the damaged stove, the landlord repaired it. She did not explain why then, if the stove was replaced roughly a month and a half prior to the May hearing, the landlord did not have any records of the tenant's request for repair.

SB testified that initially the landlord had an agreement with Shaw to provide internet and cable to all rental units in the residential property. Residents would enter into a contract with Shaw individually, but would make payments to the landlord who would then pay Shaw on the residents' behalf. She stated that when the landlord's agreement with Shaw ended, the landlord notified all residents and let them know that those who wanted to continue their services with Shaw could maintain their individual contracts with Shaw and pay Shaw directly.

She testified that the landlord then entered into an agreement with Telus that was similar in nature to the original agreement with Shaw. She testified that the tenant chose to make the switch from Shaw to Telus, and could have stayed with Shaw or switched from Telus back to Shaw during the tenancy. The landlord provided no documentary evidence to support this portion of SB's testimony.

GM testified that the tenant was never given the option to stay with Shaw or switch back to Shaw and that she was forced to change internet service providers and incur the associated costs. No documentary evidence was submitted in support of this assertion either.

GM argued that just because the landlord could not locate any records of repair request may by the tenant for the heating system or stove does not mean that they do not exist. Rather, he asserted that the landlord was disorganized in its administration of the residential property and the landlord relies on this to abdicate its responsibility to properly maintain the rental unit.

## **Analysis**

Section 32 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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Additionally, Residential Tenancy Branch (the “**RTB**”) Policy Guideline 1 addresses landlord’s and tenant’s responsibility for repairs and maintenance. Expects from this Policy Guideline which are pertinent to this application are as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

[...]

### **WALLS**

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

[...]

### **PAINTING**

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

### **FURNACES**

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer’s specifications, or annually where there are no manufacturer’s specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

2. The tenant is responsible for cleaning floor and wall vents as necessary.  
[...]

### **LIGHT BULBS AND FUSES**

1. The landlord is responsible for:
  - making sure all light bulbs and fuses are working when the tenant moves in.
  - replacing light bulbs in hallways and other common areas like laundry and recreational rooms; and
  - repairing light fixtures in hallways and other common areas like laundry and recreational rooms.
2. The tenant is responsible for:
  - Replacing light bulbs in his or her premises during the tenancy,
  - Replacing standard fuses in their unit (e.g. stove), unless caused by a problem with the stove or electrical system, and
  - Making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system.

[...]

### **SECURITY**

In a multi-unit residential premises, in addition to providing and maintaining adequate locks or locking devices on all doors and windows of each individual unit within the premises, the landlord is responsible for providing adequate locks or locking devices on all entrances to common areas in the premises and on all storage areas.

[...]

### **1. Heating**

GM and both of the tenant's witnesses testified that the heat does not work in the rental unit and that the vents emit metallic dust. SB testified that the landlord takes no position on the tenant's request for repairs to be made to the heating system. Accordingly, I accept GM and both witnesses' evidence as true. I find that the heating in the rental unit does not work and that it emits metallic dust into rental unit. This amounts to a failure of the landlord to repair or maintain the rental unit in a condition suitable for habitation.

Additionally, I accept GM's testimony, confirmed by SF, that the rental unit has been without adequate heat for five years. I am not persuaded by SB's testimony that the landlord never received notice of the rental unit's lack of heat. I find HH's testimony that she and the tenant reported this issue to the landlord to be persuasive. Additionally, the lack of any record of the tenant's request to repair the stove burner in the landlord's evidence seems, despite the fact SB admits the landlord repaired the stove, seems to suggest that the records for repair requests provided by the landlord are incomplete.

I accept GM's testimony that the tenant incurred an additional cost of \$20 per month to run the electric heaters for five years. I also accept his testimony that she purchased two heaters at a cost of \$200. These expenses would not have had to been incurred had the landlord repaired the rental unit's heating system when it first started to



malfunction. I find that the tenant is entitled to a retroactive rent reduction to recover these amounts totaling \$1,400 (60 months x \$20 per month = \$1,200; \$200 for heaters).

The parties did not make submissions as to an appropriate timeline within which the landlord must investigate and complete the repairs to the heating system. In the circumstances, I find it reasonable to order the landlord to investigate problems with tenant's heating system no later than August 31, 2022, and to complete repairs on it no later than September 30, 2022. The tenant must make all reasonable accommodations to the landlord to allow for this inspection and repairs to be done. If the landlord fails to complete the repairs by September 30, 2022, the tenant may deduct \$100 from October 2022 rent. If the repairs are not finished by October 21, 2022, the tenant may deduct an additional \$100 from November 2022 rent (\$200 total), and so on for each month the heating system is not repaired, to a maximum of \$500.

## 2. Walls, Doors, Ceiling, and Blinds

Based on the testimony of GM, supported by the photographs entered into evidence, I find that the walls and ceiling of the rental unit are not in a condition suitable for habitation. I find that the paint on the ceiling is flaking away common that the walls have been improperly patched, plastered, or repainted, and that large segments of the walls are stained black. I find it more likely than not that this staining is a result of the metallic dust emanating from the heating vents. I do not find that this is the tenant's responsibility to clean.

SB did not disagree with GM's testimony that the landlord had not repainted the rental unit at any point during the tenancy. Per Policy Guideline 1, the tenant is entitled to have the rental unit repainted at "reasonable intervals". It has been at least 13 years since the rental unit interior has been repainted. This is longer than a reasonable interval.

As such, I order that the landlord clean the walls and ceiling (in acknowledgment that the black staining is likely caused by the metallic dust from the vents), repair all holes in the walls and ceiling, refinish any repaired areas (either those parts repaired pursuant to this order or those part prepared at a prior time) so that they are of a similar texture to the original walls, and repaint all walls and ceilings.

Finally, I accept GM's undisputed testimony that the interior doors in the rental unit are difficult to open or close. I cannot say that this means their replacement is necessary. It may be that alterations to the doorframe, hinges, or the door itself will allow them to open and close with ease. As such, I order that the landlord repair to interior doors of the rental unit so that they are easily opened and close. If such repairs are possible, I order that the landlord clean and repaint them. If such repairs are not possible, I order that the landlord replace the doors with ones that the are able to be opened and closed easily.

I order that the landlord repaint the rental unit and make the ordered repairs to the doors no later than September 30, 2022. The tenant must take all reasonable steps to accommodate this work, including removing belongings mounted to the walls, moving furniture away from the walls, and temporarily relocating from the rental unit (if required by the landlord). If the landlord requires the tenant to relocate from the rental unit, the tenant may deduct \$30 from her next month's rent for each night that she is required to be away from the rental unit.

Pursuant to the tenancy agreement, the blinds are provided to the tenant by the landlord. Based on GM's testimony and the photos submitted into evidence, I find that the blinds are no longer properly attached to the top of the window frame. Rather, they are affixed using tape. This is not an adequate repair. I ordered that the landlord remount the blinds according with manufacturer specifications, or in the alternative, industry standards no later than September 30, 2022.

If the landlord fails to complete the repainting and repairs by September 30, 2022, the tenant may deduct \$50 from October 2022 rent. If the repairs are not finished by October 21, 2022, the tenant may deduct an additional \$50 from November 2022 rent (\$100 total), and so on for each month the heating system is not repaired, to a maximum of \$250. These deductions are in addition to any deductions authorized above.

### 3. Bathroom Ventilation

The tenant has not provided any documentary evidence which supports her allegation that the bathroom found does not properly ventilate or is damaged as a result of improper ventilation. As such, I find the tenant has failed to discharge her evidentiary burden to establish the bathroom exhaust fan requires repair.

I dismiss this portion of the application without leave to reapply.

### 4. Luminosity of the lights

Based on GM's testimony, I understand that the issue of the lights being dim in the rental unit has been ongoing since the start of the tenancy. I note that no documentary evidence has been provided to me that the light fixtures are not in a fully operable condition. It may be that the number of light fixtures installed in the rental unit do not, by themselves, provide adequate light in the rental unit. However, this does not mean that the landlord is required to install additional fixtures. I do not find the lack of fixtures amounts to a failure of the landlord to repair or maintain the rental unit.

No evidence has been presented which suggests the tenant is unable to achieve additional illumination in the rental unit by plugging floor or table lamps into electrical sockets. Additionally, it is the tenant's responsibility to supply and change light bulbs in

the rental unit. She may consider acquiring light bulbs have a greater luminosity and she is currently using.

I find that this relief sought amount to an upgrade to the existing lighting system and is not properly characterized as repairs.

I dismiss this portion of the tenant's application without leave to reapply.

#### 5. Back Patio

Per RTB Policy Guideline 1, the landlord is required to provide locks on all doors into the rental unit and to provide "adequate locks or locking devices on all entrances to common areas in the premises". The tenant claims that the patio is part the rental unit. The landlord implicitly claimed that other occupants have a right to access it. I do not have sufficient information to resolve this matter, and in any event this matter was not raised at the hearing. It may become the subject of a future hearing.

However, regardless of the status of the patio, the Policy Guideline is clear: a lock must be on the patio's gate. No such lock exists. Accordingly, I order that the landlord install a locking mechanism on the gate separating the exterior of the residential property from the tenant's patio and provide the tenant with a key (or other means of access, such as a fob or a passcode) to that gate. I make no order about whom else is entitled to a copy of the key or the means of access.

Neither the Act nor the Policy Guidelines contains any requirements for the landlord to provide enhanced security measures to the residential property. I do not find that the railing or windows are inadequately maintained or in a state of disrepair. Accordingly, I cannot order that the landlord make any repairs to them.

I decline to order that the landlord install bars on the rental unit's windows or install a new railing system on the patio. There is no basis in the Act for me to make such an order and I find it would be unreasonable for me to do so. Such alterations would amount to an upgrade of the rental unit.

I do note that, if the landlord elects to upgrade the residential property's security system, the section 23.1 of the *Residential Tenancy Regulations* permits the landlord to impose an additional rent increase for capital expenditure against all "specified dwelling units" on the residential property.

For similar reasons, I also dismiss the tenant's application for a rent reduction in connection with the tenant's claim that the landlord failed to adequately secure the patio.

#### 6. Cable and Internet

The parties have provided conflicting evidence as to the circumstances that led to the change in Internet service providers. The tenant claims that this change was compulsory, whereas the landlord claims that this was optional. Neither side provided any documentary evidence supporting their version of events.

As this is the tenant's application, she bears the burden of proof to demonstrate the truth of her claims on a balance of probabilities. In the absence of any proof which corroborates GM's testimony, I find that the tenant has failed to discharge her evidentiary burden. Accordingly, I declined to order any reduction of rent in connection with the change in internet service providers.

Pursuant to section 72(1) of the Act, as the tenant has been partially successful in the application, she may recover the filing fee from the landlord.

### **Conclusion**

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the landlord pay the tenant \$1,500, representing a \$1,400 retroactive rent reduction and the return of the \$100 filing fee.

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: August 11, 2022

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Residential Tenancy Branch