



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRT, RR, FFT

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to s. 67 to be paid back the cost of emergency repairs;
- an order for a past rent reduction claim under s. 65; and
- return of her filing fee pursuant to s. 72.

H.B. appeared as the Tenant. She was represented by counsel, A.S.. A.J. appeared as support for the Tenant and did not provide evidence during the hearing. M.M. appeared as the Landlord’s counsel. S.O. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Partial Settlement

Pursuant to section 63 of the *Act*, I may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties

discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

The Landlord agreed to settle the Tenant's claim for the cost of emergency repairs in the amount of \$167.49 as set out in the Tenant's application. Pursuant to the parties settlement for this aspect of the claim, I grant the Tenant a monetary award for this amount.

The hearing proceeded strictly on the remaining issue of the Tenant's claim for a past rent reduction.

### Issues to be Decided

- 1) Is the Tenant entitled to past rent reduction?
- 2) Is the Tenant entitled to the return of her filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on August 24, 2008.
- The Landlord took possession of the rental unit on July 31, 2022.
- Rent of \$781.55 was due on the first day of each month prior to the end of the tenancy.

A copy of the tenancy agreement was put into evidence.

The Tenant argues that the Landlord failed to properly maintain the rental unit during the tenancy. The Tenant testified to a bathroom faucet that had not been working for some time. I was directed by the Tenant to an email dated August 31, 2021 in which she made a request to have the faucet repaired. The Tenant described how the rental unit had two bathrooms and that the main bathroom was the one with the non-functional bathroom faucet, which was inconvenient for washing hands. The Tenant testified that the faucet was repaired on May 26, 2022.

I was further advised by the Tenant that she had a broken toilet seat, which she notified the Landlord of by way of email dated January 28, 2022. The Tenant's evidence includes a copy of the email. The Tenant testified that the toilet seat was repaired on May 30, 2022.

The Tenant raised further issue with a hole in the drywall which had been cut away to fix a frozen pipe. She said the hole was approximately 1 square foot in size. The Tenant testified that she notified the Landlord that the hole needed to be repaired on August 31, 2021. The Tenant says that the hole provided access into the rental unit for mice.

The most significant issue raised by the Tenant was with respect to a leaky roof for the rental unit. The Tenant says that she took notice of water entering the rental unit on or about January 1, 2022. The Tenant's evidence includes an email dated January 2, 2022 in which she advises the Landlord that there was water pooling in both bathrooms and on the kitchen floor. The Tenant testified that every room within the rental unit was affected by the water ingress except for one of the bedrooms. The Tenant testified to water dripping through electrical fixtures in the roof.

The Tenant testified that she and her neighbour went onto the roof to clear the eaves on January 17, 2022. I was advised by the Tenant that the Landlord had attempted patching the roof in February 2022 but that the leak was not fixed until March 4, 2022.

The Tenant testified that there was an issue with the electrical outlet in her kitchen, which she says was scorched after water had entered the rental unit. The Tenant says she notified the Landlord of the outlet on March 1, 2022 and that she paid to repair the outlet herself. The Tenant's evidence includes an invoice for the repairs dated April 1, 2022. The Tenant testified that she had to run an extension cord into the kitchen. At the time, the water on the floor was such that she had to keep the cord elevated off the floor.

The Landlord largely did not deny any of the alleged issues with respect to the rental unit nor was it argued that the Tenant caused the damage. The Landlord's agent indicated that the Tenant would respond to repair requests in a timely fashion, though argued that the Tenant would mention issues in the rental unit but would indicate that the issues were not urgent. The Landlord's agent testified that a roofer was brought in from out-of-province due to the size of the community and the difficulty in obtaining tradespeople.

Landlord's counsel argued that the Tenant only gave a formal request for the repairs on March 27, 2022. A copy of the email in question was provided by both parties. It was further argued that the Tenant's formal request was initiated by the Landlord's previous application to obtain possession of the rental unit to undertake the repairs.

Tenant's counsel disputes that the Tenant only gave notice of the repairs on March 27, 2022. The Tenant argued that the Landlord failed to act diligently with respect to the repairs as they were attempting to obtain vacant possession of the rental unit. I was directed by the Tenant to an email dated March 1, 2022 from Landlord's counsel in which it was alleged that the property damage was a result of the Tenant's negligence and refusal to leave the rental unit. Landlord's counsel apologized at the hearing with respect to the email she sent to the Tenant.

The Tenant's application claims \$3,400.00 in the form of past rent reduction. The Tenant's evidence includes a worksheet in which she estimates the value lost for each of the elements within the rental unit. At the hearing, Tenant's counsel suggested that I assess the claim as a global claim for \$3,400.00 rather than rely upon the estimates provided by the Tenant in her evidence.

### Analysis

The Tenant seeks past rent reduction for various repair issues.

Pursuant to s. 65 of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs.

Section 32 of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character, and location of the rental unit, make it suitable for occupation for a tenant.

There is little dispute regarding the various repairs that the Tenant indicates were not undertaken by the Landlord. At the hearing, there was no argument by the Landlord that the Tenant caused the damage. The Landlord argues it is difficult to obtain tradespeople within the community. Neither the *Act* nor the Policy Guidelines permit landlords to

breach their obligations to repair the property when the rental unit is in more remote locations.

The Landlord argues it acted diligently. Landlord's counsel argues the first formal request received from the Tenant regarding the repairs were made on March 27, 2022. The Tenant's evidence includes emails to the Landlord's employees dated August 31, 2021, January 2, 2022, January 4, 2022, January 16, 2022, January 28, 2022, February 25, 2022, March 1, 2022, March 9, 2022, March 27, 2022, and May 11, 2022, all of which contain at least one request for repairs. Some of these range from the relatively minor, being the toilet seat, to the more severe, being water leaking through the roof. The evidence does not support that the Landlord acted diligently with respect to the relevant repair issues mentioned by the Tenant at the hearing.

Two emails from Landlord's counsel dated March 1, 2022 and March 29, 2022 provide a telling response with respect to the Landlord's approach to the various repair requests. On March 1, 2022, the Landlord indicates that the rental unit needed to be vacated to be repaired, that the Landlord would not be willing to pay for a hotel, and that the damages to the property were a result of the Tenant's negligence and refusal to vacate. On March 29, 2022, the Landlord argued that the repairs requested on March 27, 2022 were not "emergency repairs" and were not necessary for the health and safety of the building. It was re-emphasized on March 29 that the Landlord was of the view the rental unit needed to be stripped "down to its studs".

Landlord's counsel apologized for the tone of her March 1, 2022 email. I appreciate her doing so. However, the apology does not negate the Landlord's conduct with respect to the routine and extraordinary repair requests made by the Tenant from August 31, 2022 until May 11, 2022. The correspondence is clear that the Landlord believed the rental unit was beyond ordinary repair and that it would be easier for the Tenant to vacate. Once this opinion was set, it appears more likely than not that the Landlord was less than diligent in repairing the rental unit over the relevant period.

The Tenant confirms the last of the repairs were completed by the end of May 2022. This was not disputed by the Landlord. Though not summarized in the facts and background, I was advised that the parties had previously had a hearing before the Residential Tenancy Branch on May 30, 2022. Upon review of that matter, the Landlord had applied for possession of the rental unit to perform renovations or repairs. The parties settled that dispute. I cannot help but note the contemporaneity of when the repairs were completed and when the Landlord's application was heard. This may be

coincidental or it may also be that the Landlord wished to attend the hearing with clean hands. In any event, I need not make findings on this point.

I have little difficulty finding that the Landlord breached its obligation to repair the rental unit under s. 32 of the *Act*. I find that the Landlord's breaches give rise to the Tenant's claim for past rent reduction.

I do not agree with Tenant's counsel submission that I view the matter as a global claim rather than a rent reduction claim. Rule 2.2 of the Rules of Procedure is clear that a claim is limited to what is stated in the application. The claim is one of \$3,400.00 for the rent reduction. Further, even if there were a general monetary claim, an applicant must still prove a monetary loss. In other words, the claim would still need to refer to loss of value, in this instance by reference to loss of amenities in the rental unit. The *Act* does not generally permit non-pecuniary losses except when aggravated damages are claimed and Policy Guideline #16 is clear that these are rarely awarded. The Tenant does not claim aggravated damages.

Dealing first with the bathroom faucet, the Tenant's email of August 31, 2021 clearly demonstrates that she notified the Landlord a repair was necessary as it was "unusable for over a year because of a bad leak". The Tenant advises and I accept that the bathroom faucet was repaired by the end of May 2022. The Tenant's written submissions estimate the loss of value to be \$100.00 per month and the Tenant testified to the inconvenience of the bathroom sink not working within the main bathroom. I find that this an appropriate figure. I find that the Tenant is entitled to a rent reduction of \$900.00 for the bathroom faucet (September 2021 to May 2022 x \$100.00).

Looking next to the drywall hole, the Tenant's email clearly identifies that the hole was present, needed fixing, and that it caused heat loss within the rental unit. Later emails indicate the issue with respect to mice. The Tenant claims and I accept that the issue was addressed by the Landlord in May 2022. I find that the Tenant is entitled to a rent reduction over the claimed 9-month period. The Tenant's written submissions estimate this at \$50.00 per month. I find that this is excessive under the circumstances, particularly when compared to the loss of value from the bathroom faucet and that the issue was one that was more of an aesthetic nature, though the hole did present rodent issues. I find that an appropriate amount would be \$25.00 per month, meaning a total amount of \$225.00 for this portion of the claim (\$25.00 x 9 months).

With respect to the kitchen outlet, the Tenant's evidence supports that the Landlord was notified of the issue with the circuit in the kitchen at the beginning of March 2022.

Despite this, the Landlord did not repair the circuit and the Tenant obtained an electrician at her own cost to undertake the repair. I find that the Tenant is entitled to a rent reduction for the one month the kitchen circuit was affected. The Tenant's submissions indicate the loss of value of the kitchen circuit was \$150.00. I agree and find that she is entitled to \$150.00 rent reduction for March 2022.

Looking at the toilet seat, the Tenant's evidence demonstrates the Landlord was notified the toilet seat needed repaired on January 28, 2022. The Tenant advises and I accept the toilet seat was repaired on May 30, 2022. I find that the Tenant is entitled to a rent reduction for the toilet seat for the affected four months (February to May 2022). The Tenant estimates this to be \$300 over the four-month period (\$75.00 per month). I find that this amount is excessive relative to the other amounts ordered. I find that an appropriate figure would be \$25.00 given the issue. I find that the Tenant is entitled to \$100.00 for the toilet seat (\$25.00 x 4 months).

Looking finally at the water leaks, I accept that the roof began to leak on or about January 1, 2022. The Tenant's evidence demonstrates the Landlord was notified on January 2, 2022. The Tenant confirmed at the hearing that the roof leak was repaired on March 4, 2022. The Tenant advises and I accept that nearly every room within the rental unit was affected by water entry. This point was not disputed by the Landlord. I find that the water leak presented a significant issue with respect to the overall health and safety of the rental unit, one that substantially eroded the value provided to the Tenant as a living accommodation.

The Tenant's written submissions claim \$1,600.00 for this amount. I note that this exceeds the total rent payable over the two-month period in which the issue was present (January and February 2022). Also, there are three separate rent reductions over that relevant period which have been granted (\$100.00 for the bathroom faucet, \$25.00 for the hole, and \$25.00 for the toilet seat). It would be inappropriate, in my view, to order a rent reduction that exceeded the rent payable under the tenancy agreement. Given this and the other amounts ordered, I find that the Tenant is entitled to a rent reduction of \$600.00 per month for the affected months, totalling \$1,200.00 (\$600.00 x January-February 2022).

In summary, I find that the Tenant is entitled to the following rent reductions:

Item	Rent Reduction Per Month	Total Months	Total Rent Reduction
Bathroom Faucet	\$100.00	9 (Sept/21 to May/22)	\$900.00
Drywall Hole	\$25.00	9 (Sept/21 to May/22)	\$225.00
Toilet Seat	\$25.00	4 (Feb/22 to May/22)	\$100.00
Kitchen Appliance Circuit	\$150.00	1 (March 2022)	\$150.00
Water Leaks	\$600.00	2 (Jan/22 and Feb/22)	\$1,200.00
<b>Total</b>			<b>\$2,575.00</b>

### Conclusion

The parties settled the Tenant's claim for repayment of the cost of emergency repairs. The Landlord agreed to pay the Tenant \$167.49 for the cost of the electrician. Pursuant to the parties' settlement, I order that the Landlord pay \$167.49 to the Tenant.

The Tenant has established a past rent reduction claim totalling \$2,575.00.

The Tenant was largely successful in her application. I find that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee.

I make a total monetary order pursuant to ss. 63, 67, 65, and 72 and order that the Landlord pay **\$2,842.49** to the Tenant (\$167.49 + \$2,575.00 + \$100.00).

It is the Tenants obligation to serve the Landlord with the monetary order. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: September 06, 2022

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Residential Tenancy Branch