



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP MNRT MNDCT RPP FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for regular repairs to the unit, site or property, for a monetary claim of \$1,530.57 for the cost of emergency repairs and for money owed or compensation under the Act, regulation or tenancy agreement, in addition to the return of personal property and to recover the filing fee.

The tenant and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

The landlord confirmed being served with the tenant's application and having had the opportunity to review the documentary evidence from the tenant. The landlord confirmed that they did not serve or upload any documentary evidence in response to this application before me. Given the above, I find the landlord was sufficiently served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application for repairs to the unit, site or property. I find that not all the claims on the application are sufficiently related to be determined during this

proceeding. I will, therefore, only consider the tenant's request for regular repairs to the unit, site or property, and the cost of the filing fee at this proceeding. **The balance of the tenant's application is dismissed, with leave to re-apply.**

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Furthermore, the tenant requested that their return of personal property, laminate flooring, be dealt with at this hearing. As a result, the tenant was given the choice of either proceeding with the repairs request or to withdraw that portion of their application to instead address the return of the tenant's personal property. The tenant ultimately made the decision to proceed with their request for repairs as the tenant continues to occupy the rental unit. Given the above, and as noted above, the tenant has leave to reapply for the return of their personal property.

#### Issues to be Decided

- Has the tenant provided sufficient evidence that repairs are required to the unit, site or property?
- If yes, should an order or orders be made regarding those repairs?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

#### Background and Evidence

A copy of the tenancy agreement was submitted for my consideration. A fixed-term tenancy began on May 1, 2015 and converted to a month-to-month tenancy after May 29, 2017. Monthly rent is \$1,600 and is due on the first day of each month. The tenant paid a security deposit of \$800 and a pet damage deposit of \$800.

The tenant is seeking the following repairs, which their application states as follows:

The house was supposed to be a 3 bedroom, 2 bathroom house. However the main bathroom was not functional as it was poorly built with paint coming off the sink and bathtub immediately upon using it. It's been tolerated for 7 years but I believe it is time to fix this issue.

[Reproduced as written]

The landlord confirmed the rental property was built in 1974. The landlord stated that they don't think the sink and bathtub are original but was unable to provide further

information on the age of the sink and bathtub. Both the sink and bathtub photos show what appears to be an old yellow sink and old yellow bathtub with white paint peeling significantly off both. The landlord was asked if the sink and bathtub were painted to which the landlord replied first replied "I don't know" and then clarified that "they would have had to of been" based on the photos.

The landlord testified that they purchased the home in either 2001 or 2006. The tenant stated that they think it was either 2005 or 2006. The landlord confirmed that the previous tenant occupied the rental unit 10 years ago and that the previous tenant must have painted the sink and bathtub with white paint. The current tenant has occupied the rental unit since May 2015.

The tenant also indicated that in the last photo presented, that to the right of the sink, peeling has occurred which supports that the countertops were also painted white. None of the photos support that enamel paint was used as the sink, bathtub and countertop are all peeling in the photos submitted by the tenant.

The landlord stated that they just want the tenant out so they can demolish the home or renovate it. The landlord was advised during the hearing that they could end the tenancy by way of a signed mutual agreement or to serve the appropriate Notice to End Tenancy on the tenant, which the tenant then has the right to dispute, if necessary.

The tenant testified that both the bathtub requires caulking around it to ensure no water leaks into the wood surround of the bathtub. The tenant also requested that the wood surround be replaced with tile or something more appropriate due to water being in the bathtub.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I do not agree with the tenant that the wood surrounding the bathtub should be replaced with tile or something more appropriate as the tenant viewed the rental unit and made the decision to rent it and that section 32(1)(a) indicates having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant, and I find the wood bathtub surround does not prevent the use of the bathtub.

I find the photo evidence to be of significant weight and to be compelling. I find tenant has met the burden of proof as the photo evidence supports that the incorrect paint was used to paint the countertops, sink and bathtub. I also find that by using the wrong paint on the countertop, sink and bathtub whether it be by the landlord or a previous tenant, that the incorrect paint is more likely than not, a health hazard currently. Given the above, I find the landlord breached section 32(1)(a) of the Act by failing to provide and maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards required by law.

Therefore, pursuant to section 62(3) of the Act, I make the following 4 orders:

1. **I ORDER** the landlord, at their expense, to either replace the bathroom sink or repaint the bathroom sink using waterproof enamel paint **within 90 days of the date of this Decision.**
2. **I ORDER** the landlord, at their expense, to either replace the bathtub or repaint the bathtub using waterproof enamel paint **within 90 days of the date of this Decision.**
3. **I ORDER** the landlord, at their expense, to either replace the bathroom countertop or repaint the bathroom countertop using waterproof enamel paint **within 90 days of the date of this Decision.**
4. **I ORDER** the landlord, at their expense, to caulk/re-caulk with waterproof caulking around the sink and bathtub **within 90 days of the date of this Decision.**

If the landlord fails to comply with my orders above, the tenant may apply for monetary compensation including, but not limited to, an application for a reduction in rent until such time that the orders have been completed. The tenant may also contact the RTB Compliance and Enforcement Unit to report the non-compliance of my orders, should the landlord fail to comply with either of my orders below within the specified timelines.

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the Act, in the amount of **\$100.00** to recover the cost of \$100.00 filing fee. As a result, I make the following fifth order pursuant to section 62(3) of the Act:

5. **I ORDER a one-time rent reduction for the tenant in the amount of \$100.00 from a future month's rent**, in full satisfaction of the tenant's recovery of the cost of the filing fee.

Conclusion

The application has merit.

I have made 5 orders as noted above pursuant to section 62(3) of the Act.  
The remedy for non-compliance with my orders indicated above is noted above.

The filing fee is granted by way of a one-time rent reduction as noted above.

The decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 9, 2022

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Residential Tenancy Branch