



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FAIRFIELD APARTMENTS LTD, FAIRFIELD APARTMENTS LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **RP, FFT**

### **Introduction**

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

1. An Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed pursuant to Section 32 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agents, JM, DM, LV, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by email on June 27, 2022, the Landlord confirmed receipt, deemed served on June 30, 2022;
- the Landlord's evidence package served by email on October 24, 2022, the Tenant confirmed receipt, deemed served on October 27, 2022.

Pursuant to Sections 88, and 89 of the Act, and Sections 43 and 44 of the *Residential Tenancy Regulation*, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

1. Is the Tenant entitled to an Order for repairs to the unit?
2. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 1, 2021. The fixed term ended on June 30, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,620.00 payable on the first day of each month. A security deposit of \$797.50 and a pet damage deposit of \$797.50 were collected at the start of the tenancy and is still held by the Landlord.

The Tenant testified that around October 2021, she brought up with the Landlord the issue with the three windows in her rental unit having heavy condensation including between the panes of glass. She states that everyday she needs to remove the water build up on the windows and in the tracks the windows slide in. She also has to clean up the mould build up around the windows. She said the drywall on the side of the windows is soft and damp; she can stick her fingers into the drywall.

The Tenant stated that someone looked at the window issue in January 2022 and the report told by the Landlord to her was that it would be \$7,000.00 to replace the windows. The Landlord told her that that *'is not in their budget, and it's not going to happen.'*

The Tenant has recently experienced inflammation in her nose and the doctor has prescribed a nasal steroid spray for her nose. The Tenant said she is also taking a pill that she has never taken before. The doctor told her that it could be an impact from mould. The Tenant works from home three days per week, the other two days, she is in her office and the building has an HVAC system.

The Tenant wrote a letter to the Landlord on March 25, 2022 explaining about the condensation issue in the windows. The Tenant's letter also explains that when it rains, water pools all along the windowsills and runs down onto the floor. The Tenant uploaded photographic evidence of the amount of water on her windowsills. The Tenant reports in the letter that mould grows on the windows, and she has to stay on top of cleaning it using bleach. The Tenant requests that the mould issue be addressed, and that the windows are replaced.

The Landlord has had at least one window repair company come and measure for replacement windows. The Landlord states it is a six-month minimum until the work can begin. The Landlord testified that the windows in the building are 60 years old, and the seals on double paned windows do break. The seals breaking on the double paned windows has nothing to do with the condensation issue.

The condensation arises because of a lack of ventilation especially so when it is cold outside and warm inside. The building is an older building and there are no fans in the bathrooms, only a vent. The only fan in the rental unit is in the kitchen. The Landlord stated that the Tenant's plants also contribute to the accumulation of humidity in the rental unit.

The Landlord said they have not investigated the soft drywall beside the Tenant's windows. They stated they need to send their contractor in to check this out. The Landlord stated that old plaster is soft especially when moisture is involved. When the window comes out, they will have their contractor go in to assess the needed work.

Replacing the windows is a large project, and it is not feasible to fix one unit's windows. They need to budget for this work, and they project it will be in about three years before the windows are replaced.

### Analysis

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.

RTB Policy Guideline #1- Landlord & Tenant – Responsibility for Residential Premises clarifies the responsibilities of landlords and tenants regarding maintenance, cleaning,

and repairs of residential property. Section 32 of the Act sets out the obligations of landlords and tenants to repair and maintain rental units. Section 32(1) of the Act states a landlord must provide and maintain 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, makes it suitable for occupation by a tenant. Pursuant to Section 32(2) of the Act, the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit.

RTB Policy Guideline #40-Useful Life of Building Elements provides a general guide for determining the expected lifetime, or the acceptable period of use, of an item under normal circumstances. Policy Guideline #40 provides that the useful life for windows and window framing for wood/aluminum windows is 15 years and 15/20 years respectively.

The Landlord gave evidence that this is a 60-year-old building. The Landlord also testified that double paned windows' seals break as they age. The Tenant has a lot of condensation on her windows and window frames, some of which can be alleviated by keeping her windows slightly open as drafts will be produced by the heaters below the windows. The Landlord testified that they must have their contractor go in and assess the soft drywall/plaster on the sides of the windows.

The soft drywall/plaster on the sides of the windows is concerning as the Tenant wrote when it rains, water comes into her rental unit. This residential property is an older building; however, it seems there is a water leakage problem which in conjunction with the condensation has created a mould issue. It is not certain that the mould is any of the dangerous kinds of moulds as they have not been environmentally tested, but the Tenant has developed some kind of allergy problems which may be attributed to the persistent mould problem. I find that it is not proven by the Landlord that the Tenant's plants contribute that much water accumulation on her windowsill. Based on a totality of the evidence and a balance of probabilities, I find the Landlord needs to address this water ingress issue and must replace these very old windows in the Tenant's rental unit.

I Order the Landlord to replace the windows in the Tenant's rental unit. The windows are well past their useful life and although I find the character of the home is dated, it is the Landlord's obligation to repair and maintain this rental unit. It is time. This work must be completed by April 30, 2023.

I Order the Landlord to investigate and repair the issue with the soft drywall/plaster on the sides of the windows in the Tenant's rental unit. This investigation and repair must be completed no later than April 30, 2023. I have taken into consideration the time of year and the timeframe the Landlord said it would take for a window replacement company's supply issues.

If the Landlord fails to complete the investigation, repairs and replacements by April 30, 2023, the Tenant may deduct \$100.00 from May 2023 rent. If the repairs are not completed by May 31, 2023, the Tenant may deduct an additional \$100.00 from June 2023 rent (\$200.00 total). If the repairs are not completed by June 30, 2023, the Tenant may deduct an additional \$100.00 from July 2023 rent (maximum \$300.00 total). This maximum deduction will continue until the repairs are completed. These deductions are ordered pursuant to Sections 62(3) and 65 of the Act.

RTB Policy Guideline #1 states that a tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals. I Order the Tenant to clean the interior of the windows and to maintain as dry a situation under the windows as she can maintain until the repairs are completed. Beyond this time though, it is the Tenant's responsibility to clean the windows and tracks, and remove mould during her tenancy.

Should the Landlord fail to comply with these Orders, the Tenant is at liberty to apply for dispute resolution and request further financial compensation for her losses. I make no finding on the merits of any future possible application in this regard.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

### Conclusion

I Order the Landlord to replace the windows in the Tenant's rental unit. This work must be completed by April 30, 2023.

I Order the Landlord to investigate and repair the issue with the soft drywall/plaster on the sides of the windows in the Tenant's rental unit. This investigation and repair must be completed no later than April 30, 2023.

I Order the Tenant to clean and maintain the interior of the windows and tracks, and remove mould during her tenancy.

The Tenant may withhold \$100.00 from next month's rent to recover her application 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 Act.

Dated: November 08, 2022

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Residential Tenancy Branch