



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, RR, RP, FFT

### Introduction

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

- an order pursuant to s. 67 for monetary compensation for loss or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 32 for repairs to the rental unit; and
- return of his filing fee pursuant to s. 72.

S.N. appeared as the Tenant. T.H. and C.L. appeared as the Landlord’s agents.

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. 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.

### Issues to be Decided

- 1) Is the Tenant entitled to monetary compensation for loss or other money owed?
- 2) Is the Tenant entitled to a rent reduction?
- 3) Should the Landlord be ordered to undertake repairs?
- 4) Is the Tenant entitled to the return of his 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 moved into the rental unit on September 15, 2021.
- Rent of \$2,791.25 is due on the first day of each month.
- The Tenant paid a security deposit of \$1,375.00 to the Landlord.

A copy of the tenancy agreement was provided to me by the parties.

The Tenant testified to several deficiencies present in the rental unit when he moved in at the beginning of the tenancy. The Tenant advises that he cleaned the rental unit, fixed closet shelves, and repaired a shelf in the washroom. The Tenant estimates that he spent 4 hours cleaning and 2 hours repairing issues that ought to have been addressed by the Landlord. The Tenant seeks compensation for his time.

The Tenant further advised that he repaired a broken part on the microwave and replaced the oven light. I have been provided with two invoices for these amounts. The first is dated December 21, 2021 and is related to the microwave repair, which totalled \$83.41. The second is dated March 1, 2022 and is related to the oven light, which totalled \$25.73.

In the Tenant's Notice of Dispute Resolution, he lists that he seeks \$834.16 in compensation for the repair and his time in cleaning the rental unit. The Tenant advised that he came to this amount by charging an hourly rate for 6 hours and included the two receipts. The Tenant provided no submissions on the hourly rate he used or how he came to the amount claimed other than referring to the receipts mentioned above.

The Landlord's agents provided a copy of the move-in inspection report and argued that it did not indicate any cleanliness issues were present. It was also argued that the amount sought by the Tenant is exorbitant based with an hourly rate in excess of \$120.00 per hour. I am further advised by the agents that the rental unit was professionally cleaned by the previous tenant.

The condition inspection report provided by the Landlord, which is in the standard form provided by the Residential Tenancy Branch and was signed by the parties, states the following:

START OF TENANCY Property #2 #31  
 X. Repairs to be completed at start of tenancy: (list repairs) Living room blind top loose needs fixing  
Master closet bracket broken needs fixing, kitchen pot light needs replacing,  
cabinet shelf peg missing, needs fixing (corner shelf). Sm glass shelf bracket put on wall  
backwards.

The Tenant directs me to clause 6 of the tenancy agreement, which indicated that window coverings are included in rent. The Tenant testified that the rental unit's blinds are not functional and that the different sections are broken in different ways. I have been provided photographs of the rental unit, which shows a bedroom in a second-floor loft and windows running from the floor to the ceiling. Some of the photographs show the mechanism for the blinds, which appear to have been ripped out of the upper housing. The Tenant further advised that he lacks privacy in the bedroom loft as it can be seen from the street. The Tenant's evidence includes a photograph from the loft looking onto the sidewalk, which is visible through the blinds. The Tenant seeks an order that the Landlord repair the blinds.

The Landlord's agents argued that the blinds were functional in that they covered the windows. The Landlord's evidence includes a photograph from the street, which the agents say demonstrates the blinds work to provide privacy. At the same time, however, the Landlord's agents advised that they received an estimate to replace the blinds, which they say would cost approximately \$24,000.00. The Landlord's written submissions indicate they obtained a contractor on May 24, 2022 with respect to the blinds. Further, the Landlord's evidence includes an email dated June 4, 2022 with respect to a quote for replacing the blinds at \$22,778.00 without tax. I am advised by the agents that the blinds could not be repaired and would need to be replaced. It was argued that the cost was such that it would be a hardship to the rental unit's owner to pay for the repairs.

The Tenant further testified that the heating within the rental unit is insufficient. I am advised by the Tenant that the space is heated by electric baseboard heaters. The Tenant testified that with the heaters operating the space would only be heated to 16 degrees Celsius. To heat the space, the Tenant says that he turned the oven on to heat it to room temperature. The Tenant says that he replaced the door seals to the rental

unit in the hopes of mitigating the heat loss but is concerned that that will prove insufficient to address the issue.

The Landlord's agent C.L. directed me to an email from the Tenant in which he advised the agent that the heaters were operating at 100%. Review of the correspondence provided by the Landlord shows the email to have been sent by the Tenant to the agent on December 29, 2021 and states:

The apartment is very cold in this weather. I need to have the oven on full time over this cold snap, just to keep the space above 20 degrees and at night it dips below 17 deg. All of the unit heat elements are on and working at 100%, but the heat is escaping somewhere. I understand it is not every day in Vancouver it reached -10. But the apartment temperature needs to be able to stay at a comfortable level. The blinds would provide a barrier for the convection next to the glass to slow down.

C.L. testified that he took the email to mean that the baseboard heaters were working at 100% such that they were not in issue. It was argued also that the blinds provide no insulative value. It was further argued that the Landlord could have provided a space heater but understood that the heating was not an issue and that the blinds were.

The Tenant further discussed other repair issues, including a kitchen light, though acknowledges it was repaired by the Landlord. I am further advised that the fridge was broken for a month until it was fixed.

As a general submission, the agents argued that the Tenant takes steps to repair the issues without first advising the Landlord. As an example, the Landlord's written submissions mention the broken microwave handle, which they say the Tenant advised was broken at the same time he advised that he ordered a part for its repair. The written submissions further argue that the Tenant's conduct deprives the Landlord of exploring potentially cheaper options. The Landlord's agents submit that it has hired repair people at the Tenant's request, with the Landlord's evidence including copies invoices for various repairs.

The Tenant also seeks an order for a rent reduction. At the hearing, the Tenant argued that he seeks a rent reduction of 15% from the beginning of the tenancy to date due to the blinds being broken and seeks a future rent reduction of 15% until the blinds are fixed by the Landlord. The Tenant also seeks a portion of his utility costs due to the

heating issue, with the Notice of Dispute Resolution stating it is 50% of the cost. I am advised by the Tenant that he provided copies of utility statements in his evidence. No such copies were provided.

The Landlord's agents argued that the building is not new, that it was built 10 or 15 years ago, and that the blinds function in that they block the view into the rental unit. They further state that you cannot see into the bedroom from the street. I was directed to clause 20(e) of the tenancy agreement, which is an acknowledgment by the Tenant that the rental unit is "as is, where is" and "that no representations or warranties have been made by the Landlord other than expressed herein". The clause further states "[t]he Tenant agrees to accept all existing damages, wear and tear, flaws and any other shortcomings without further requests for improvements".

### Analysis

The Tenant seeks an order for repairs, monetary compensation, and a rent reduction.

Section 32(1) 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.

Dealing first with the blinds, I note that Policy Guideline #1, which provides guidance with respect to landlord and tenant responsibilities for the residential property, states the following:

#### **INTERNAL WINDOW COVERINGS**

1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.

There is no dispute that the blinds were provided by the Landlord at the outset of the tenancy, a point that is confirmed by clause 6 of the tenancy agreement. Though the Landlord's agents equivocated on whether the blinds were in working order, it is clear on the evidence that they are not. The condition inspection report, which the Landlord provided, clearly states that the blinds were in issue. The Landlord undertook inquiries to ascertain the cost of repairing them and were advised that they would need to be replaced. It is difficult to conceive, based on the Landlord's own evidence, that the Landlord would have enquired on the blinds if they were of the view that they were not

in need of repair. It appears more likely than not that the Landlord got cold feet on repairing the blinds upon discovering how much the repairs would cost.

The Landlord's agents direct me to clause 20(e) of the tenancy agreement, indicating the rental unit is as is, where is. First, the tenancy agreement is unambiguous that window coverings are included in rent. Second, s. 5 of the *Act* specifically prevents landlords and tenants from avoiding the *Act*. Third, the Landlord's agent signed the condition inspection report noting that the blinds needed repaired. In other words, the Landlord contracted with the Tenant to provide blinds, noted they were not in working order when the tenancy began, and represented that they would be repaired. The Landlord cannot avoid its obligation to repair the blinds under s. 32(1) of the *Act* by mere invocation of a clause within the tenancy agreement, which s. 5 specifically prohibits.

I find that the Landlord has breached its obligation to repair the blinds as per its requirement under s. 32(1) of the *Act*. The Landlord's agents argued that the cost of the repairs is prohibitive. I am unaware of any section of the *Act* that excuses a landlord of its obligation to maintain and repair the rental unit due to the cost of the repairs. Landlord's argument has no merit and is not relevant to their obligations under the *Act*.

Looking next at the heating issue. The Tenant testified that heating the rental unit was a problem in the winter and that he had to make use of his stove to heat the space. I am directed by the Landlord's agents to an email from the Tenant dated December 29, 2021, which the agent C.L. argued meant that the heating was "working at 100%". I find the agent's interpretation of the December 29, 2021 email to be entirely disingenuous and removed from its proper context. The wording of the email is plain as day that the Tenant raised issue with respect to heating the space, that the temperature was below 17 degrees Celsius, and that he was using the oven to heat the space. Any reasonable interpretation of that email ought to have alerted the Landlord that there was a problem that should have been investigated. The Tenant attributed the cold to the blinds. I agree with the agent that the blinds likely have little to no insulative value. However, one would expect a responsible landlord to make inquiries on the heating in the space and, perhaps, send someone over to make sure everything is in working order. It does not appear the Landlord did so under the circumstances.

I find that the Landlord has breached its obligation to maintain and repair the heating within the rental unit as per its requirement under s. 32(1) of the *Act*.

The Tenant made submissions with respect to various other repair issues, though all appear to have either been addressed by the Landlord or the Tenant himself. They are not relevant to the Tenant's claim for repairs.

The Tenant also seeks monetary compensation for cleaning and repairing the rental unit. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

In this instance, I accept that the oven light and microwave handle were purchased by the Tenant. However, the Landlord's agents are correct that the proper course for repairs is to make the request with the Landlord beforehand. Review of the correspondence (specifically emails from the Tenant dated October 22, 2021 and December 29, 2021) indicate that the Tenant did not make the request, simply ordered the parts and did it himself. Though I accept the Tenant may be eager to address small matters of this nature on his own terms, it is inappropriate to impose the cost on the Landlord without first giving them the chance to repair the issues. The microwave, for example, may have been replaced outright due to age and other considerations, rather than having its handle replaced. The Tenant's actions deprived the Landlord of that choice. I do not allow these portions of the claim because the Landlord cannot rightly be considered in breach of s. 32(1) of the *Act* if they were not given an opportunity to fulfill their obligation after being informed of the issue by the Tenant.

Looking next at the claim for compensating the Tenant's time, I note the condition inspection report, signed by the Tenant, notes the rental unit to be in good and clean condition. Section 21 of the Regulations stipulates that condition reports completed in accordance with the *Act*, as this one was, are evidence of the condition of the rental unit when the inspection was conducted unless a preponderance of evidence demonstrates

otherwise. I find that the Tenant has failed to displace the evidentiary weight afforded to the condition inspection report. I accept that the Tenant likely has higher cleaning standards, but he went signed off on the condition report on the day before he claims to have cleaned the rental unit. Further, the Tenant's claim is a bare estimate of his time without supporting documentation. I find that the Tenant has failed to establish the Landlord breached any obligation under the *Act*. I further find that the Tenant has failed to quantify his loss with supporting evidence.

I dismiss the Tenant's claim for monetary compensation in its entirety.

The Tenant seeks a rent reduction. 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.

Looking first at the blinds, I have found the Landlord is in breach of s. 32(1) of the *Act* with respect to this aspect of the claim. The Tenant submits that the rent reduction ought to be 15% of the rent paid to date and a 15% rent reduction on an ongoing basis until the blinds are fixed. Window coverings are not a terribly important part of a tenancy, such that a rent reduction would generally be of nominal value. However, I note that under the present circumstances the rental unit is on a busy thoroughfare, with road and pedestrian traffic, and that it has floor to ceiling windows.

Blinds, particularly ones that function, are important to ensuring a degree of privacy within the rental unit.

There was some debate on whether the blinds provided privacy. However, it is clear from the photographs provided by the Tenant, which appear to be taken from the loft, that his bedroom is clearly visible from the street. Though the sight lines are such that half-wall, which acts as a railing, obscures most views into the back of the bedroom loft, it does not negate the fact that the space is still visible from the street.

I do not agree with the Tenant that rent be reduced by 15%, as this would change based on rent increases over time. Further, I find that the amount requested is high given that the blinds do provide significant, though incomplete, privacy into the rental unit. Accordingly, I find that the Tenant is entitled to \$150.00 in rent reduction, which is retrospective to the beginning of the tenancy and ongoing until the blinds are repaired. I



note that the tenancy began on September 15, 2021. Therefore, I prorate the amount for September 2021 to \$75.00 to reflect the start date for the tenancy.

Finally, the Tenant also seeks 50% of his utility costs due to the heating issue. In this instance, I find that the Tenant is misconstruing his obligation to pay utilities with his obligation to pay rent to the Landlord. Rent and utilities are separate and distinct. Strictly speaking, the claim for 50% of the utilities is not a rent reduction claim as utilities are not rent. Looking at the claim generously as a monetary claim under s. 67, the Tenant has failed to provide utility statements in support of the amount sought such that he would have failed to quantify his claim in any event. I find that this aspect of the Tenant's application must fail.

### Conclusion

Pursuant to ss. 32(1) and 62(3) of the *Act*, I order that the Landlord repair or replace the blinds for the rental unit.

Pursuant to ss. 32(1) and 62(3) of the *Act*, I order that the Landlord take steps to ascertain whether the rental unit's heating system is functioning properly and undertake whatever repairs are necessary to ensure there is sufficient heat in the rental unit.

I dismiss the Tenant's application for monetary compensation under s. 67 of the *Act* without leave to reapply.

I find that the Tenant is entitled to a rent reduction under s. 65 of the *Act* related to the blinds, which is equivalent to \$150.00 per month. The rent reduction shall be applied starting on September 15, 2021 and continuing until the blinds are repaired. Past rent reduction totals \$2,175.00 (\$150.00 x 14 months + \$75.00 prorated for September 2021). Once the blinds have been repaired, the rent reduction shall no longer apply for the month that follows their repair.

The remainder of the Tenant's rent reduction claim is dismissed.

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

Pursuant to s. 72(2) of the *Act*, I direct that the Tenant withhold \$2,275.00 (\$2,175.00 + \$100.00) from rent owing to the Landlord on one occasion in full satisfaction of his past rent reduction award and his 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: November 23, 2022

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Residential Tenancy Branch