



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRT, RR, RP, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- a monetary order for the cost of emergency repairs;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlords make repairs to the rental unit or property;
- an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlords for the cost of the application.

Both tenants and both landlords attended the hearing, and one of the tenants and one of the landlords each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for the cost of emergency repairs, or other damage or loss?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

- Have the tenants established that the landlords should be ordered to make repairs to the rental unit or property?
- Have the tenants established that the landlords should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement?

### Background and Evidence

**The tenant** (ES) testified that this fixed-term tenancy began at the end of December, 2019 and a new tenancy agreement was signed for a fixed-term beginning on July 1, 2021 and reverting to a month-to-month tenancy after June 30, 2022, and the tenants still reside in the rental unit. Rent in the amount of \$2,588.00 is currently payable on the 1<sup>st</sup> day of each month, and arrears of \$5,164.00 are outstanding for the months of October and November, 2022. On November 12, 2019 the landlords collected a security deposit from the tenants in the amount of \$1,275.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is the upper level of a house with a basement suite, occupied by the landlords' niece and nephew. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that no emergency repairs were made by the tenants, but there was no other category in the Application for Dispute Resolution to apply for an order that the landlords pay for repairs except for emergency repairs.

The landlords have fixed the windows, but the garage doors are still hanging off and don't work. Also, the deck needs to be repaired and the deck stairs were improperly installed, and the wood on the railing is starting to rot. Both the stairs and railings need repair.

The landlords said that the gutters needed to be cleaned and sent several text messages to the tenants about it, so the tenant cleaned the gutters, and the landlord wanted gutters over the garage as well. The tenant did the work, paid for materials, and then the landlord said the tenant told the landlords the tenant would do it for free, but the tenant did not agree to that. The tenants claim \$180.00 for materials, and it took 4 hours for the tenant to install the gutters.

The tenancy agreement states that 1 person was living downstairs, and the tenants get \$150.00 per tenant to cover the bills. However more tenants moved in after this tenancy began. The tenants told the landlord about a leaky faucet and a couple of months later the landlord asked about the high bills. The tenants called a plumber to cap off the outside faucet, who did not charge a fee. After that, the water bills went from

an average of \$900.00 to \$330.00. Numerous water bills and hydro bills have been provided for this hearing.

There were about 5 people living downstairs and in December the tenants received a \$900.00 bill for hydro just for that month. The tenants talked to the landlords about that many times, saying that the tenants couldn't afford to pay bills for 3 people, but because it was the landlord's daughter and friends, the landlords wouldn't discuss it.

**The landlord** testified that the emergency repairs were not emergencies. There was a time when the gutters needed to be installed and the landlord asked the tenant if he knew anyone who could do it. The tenant had lost his business and said he could do the work and get supplies from work in summer or spring. However come late summer it wasn't done and the landlord asked again, indicating that if the tenant could not do it, the landlords would find someone else. Each time the landlords asked the tenants to do something, the tenants were offered payment, but the tenant said not to worry about it.

The landlords did not know the hinge on the garage door was broken.

The tenants didn't hire a plumber; the landlord instigated the high water bill and no one talked to the landlords about it. The landlord talked to a neighbour about capping it. If the water bill was so high, the tenants ought to have mentioned it. The only time the tenants paid attention to it was when the bills arrived and when the landlords asked about it. The tenants also have a swimming pool in the back yard.

When the tenants moved in, the downstairs tenants consisted of 2 people, not 1 as indicated by the tenant; the landlords' daughter and another person. Rent was \$2,600.00 per month and the landlord said he would reduce it by \$50.00 per month and each tenant downstairs would pay \$100.00 for utilities. So, in total, the downstairs occupants pay \$100.00 each tenant, so these tenants got a \$200.00 payment from the downstairs occupants as well as a reduction in rent of \$50.00, for a total of \$250.00 toward utilities. There have never been 5 people living downstairs. For a time there were 3 people downstairs, and the landlord did not know that his daughter's boyfriend lived there for a month, and the landlord didn't hear anything about that from the tenants. The boyfriend paid the tenants an extra \$100.00 for utilities for staying there for 1 month. If that was an issue, the tenants ought to have told the landlords.

The landlords gave the tenants a One Month Notice to End Tenancy for Cause for repeated late rent. The tenants did not dispute it. There were no issues about the downstairs tenants paying a larger share of the utilities until the landlords issued the Notice to end the Tenancy. A hearing is scheduled for December 20, 2022.

#### SUBMISSIONS OF THE TENANTS:

When the tenants moved in they knew the landlord's daughter and a roommate lived downstairs for a month. Other than that, the tenants haven't agreed on anything, have just been told. Copies of text messages exchanged between the parties has been provided for this hearing. The tenants were late with rent only due to the high utilities due to more people living downstairs.

#### SUBMISSIONS OF THE LANDLORDS:

The tenant said that he didn't want compensation for the gutters, and suddenly the tenant expects it after the One Month Notice to End Tenancy for Cause was issued.

The entire house is about 2600 square feet, and the lower level occupies about 600 square feet, so the landlords do not believe the hydro costs are only due to the lower level occupants.

#### Analysis

Firstly, the tenant testified that there were no emergency repairs made by the tenants, but did not know how else to make the claim. I accept that the tenants claim a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement. In order to be successful, the tenants must satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the landlords' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenants made to mitigate any damage or loss suffered.

The tenants have not provided a Monetary Order Worksheet to set out the claims, however the tenants' application seeks \$800.00 for the extra water bills, cleaning gutters and installing the gutter. A landlord must reimburse a tenant for emergency repairs, but there are rules around that. The tenants agree that the gutters were not an emergency repair. Having found that the tenants intended to apply for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, I must consider whether or not the tenants have satisfied all elements in the test for damages. I have also reviewed all of the text messages, and there is no indication of any amount that the tenant intended to be paid for the gutters.

The tenant testified that he paid \$180.00 for supplies, but has not provided any receipts for the cost of supplies. None of the evidence suggests that the landlords failed to comply with the law or the tenancy agreement, or what efforts the tenants made to mitigate any loss. I find that the tenants have failed to satisfy elements 2, 3 and 4 in the test for damages regarding gutter cleaning and installing.

The tenant also testified that the tenancy agreement specified 1 occupant in the downstairs suite; 1 person was living downstairs, and the tenants get \$150.00 per tenant to cover the bills. I have reviewed the tenancy agreements, which specifies that each tenant downstairs has to pay the tenants upstairs \$100.00 per month towards utilities and internet. The landlord testified that at the beginning of this tenancy there were 2 people occupying the lower level; the landlord's daughter and another person, not 1 person. Rent had been \$2,600.00 per month and the landlords reduced it by \$50.00 per month and each occupant downstairs paid \$100.00 each, so the tenants received a total of \$250.00 toward utilities including the \$50.00 rent reduction. The tenant testified that there were about 5 people downstairs, which is disputed by the landlord's testimony. Further, I have no evidence to support whether multiple occupants resided in the lower level or for what time period. I am not satisfied that the tenants have satisfied elements 2, 3 or 4 in the test for damages respecting utilities.

The tenants' application also seeks rent reduction of \$1,500.00 due to high water bills. Many water and hydro bills have been provided for this hearing. The evidence shows that the tenant (JB) notified the landlord on May 26, 2020 that the faucet by the back door leaked. The tenant testified that the tenants called a plumber to cap off the faucet and did so without charging a fee. Certainly that would have been the landlords' responsibility but there is no evidence or testimony about when that was done. Therefore, in reviewing the bills I cannot be certain how much of the excess water bills ought to be repaid to the tenants, if any. I find that the tenants have failed to establish elements 2 and 3 in the test for damages.

The tenants have also applied for an order that the landlords make repairs to the rental unit or property, and the tenant testified that the garage doors are still hanging off and don't work and that the deck, railings and stairs need repair. The landlords have not disputed that, but seemed to indicate during testimony that the landlords were not aware that the repairs were needed. The tenants have provided 2 photographs of the posts of the deck, but I was not able to open them. I cannot order a landlord to make repairs unless repairs are required, and the first line of seeking repairs is to notify the landlord. There is no evidence that the tenants have done that. Therefore, the tenants must notify the landlord, in writing that repairs are required and what those repairs

consist of. Since the tenants have not done so, I dismiss the tenants' application for an order that the landlords make repairs to the rental unit or property, with leave to reapply.

The tenants also seek an order that the landlords comply with the *Act*, regulation or tenancy agreement, however I am not satisfied that the landlords have failed to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the tenants' application.

Since the tenants have not been successful with the application the tenants are not entitled to recover the filing fee from the landlords.

### Conclusion

For the reasons set out above, the tenants' application for a monetary order is hereby dismissed without leave to reapply.

The tenants' application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlords make repairs to the rental unit or property is hereby dismissed with leave to reapply.

The tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The tenants' application for recovery of the filing fee is hereby dismissed without leave to reapply.

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: December 21, 2022

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Residential Tenancy Branch