



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **MNRT, MNDCT, RR, RP, FFT**

### Introduction

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

1. An Order for the Landlord to compensate the Tenant for the cost of emergency repairs pursuant to Section 33 of the Act;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act;
4. 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,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent 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.

The Landlord acknowledged receipt of the Tenants' Notice of Dispute Resolution Proceeding package and evidence served by registered mail (the "NoDRP package").

Pursuant to Section 71(2)(b) of the Act, I find that the Landlord was sufficiently served with the Tenants' NoDRP package on August 29, 2022 in accordance with the Act.

### Issues to be Decided

1. Are the Tenants entitled to an Order for the Landlord to compensate the Tenant for the cost of emergency repairs?
2. Are the Tenants entitled to an Order for compensation for a monetary loss or other money owed?
3. Are the Tenants entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided?
4. Are the Tenants entitled to an Order for repairs to the unit?
5. Are the Tenants entitled to recovery of the application filing fee?

### Background and Evidence

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

The Tenants uploaded a copy of the tenancy agreement. The parties confirmed that this tenancy began as a fixed term tenancy on September 15, 2021. The fixed term ended on September 30, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$7,409.50 payable on the first day of each month. A security deposit of \$3,650.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenants each have a full-time job, and they have two small children. Shortly after the beginning of their stay, the Tenants stated they noticed the heat was not operating in the home. They called for service. They had off and on heat for two or three months. The boiler in the house was a replacement used boiler, but it was not sufficient for the system that the house contained.

In November 2021 the Tenants had four major water leaks. One started in the garage, two parking stalls had water ingress. The other areas impacted with water leaks were the main bedroom, kitchen and the middle of the living room. The Landlord told the Tenants that they would be replacing the roof in the spring/summer of 2022. As of the hearing date, this has not been completed yet.

The Tenants reported that the walls and the ceiling of the affected rooms were severely damaged, and the rooms were not fully usable for months. The Tenants replaced the damaged drywall on the ceilings and walls for which they stated the total bill for this work was \$6,000.00. As of the hearing date, the Tenants had not forwarded the Landlord's Agent the invoice for the drywall work.

In a December 16, 2021 email to the Landlord, the Tenants outlined the deficiencies with the heating, draining, leaking, balcony water, garage doors, smell, pool problems, door lock, security/cameras, roof, pest control, appliances, toilets, faucets/shower fixtures, paint and lighting in the residential property. The Tenants at that point of time sought two months of rent from the Landlord.

Since May 2022, all repairs have been completed sufficiently enough that water is no longer coming into the home. Now, the Tenants are requesting five months of rent as compensation for the ongoing problems and deficiencies from November 2021 to May 2022 which they continued to live in and deal with to protect their belongings as well as the Landlord's property.

The Tenants submitted eight undated videos. Although the Tenants did not submit a form #RTB-43-Digital Evidence Details listing, they state the videos are short in duration and illustrate the situation in the residential property. I reviewed these videos.

The Tenants agree to withdraw the emergency repair claim especially because the Landlord has agreed to reimburse the Tenants the \$6,000.00 for the drywall repairs.

The Landlord's Agent testified that he was not in the hearing to dispute that repairs were needed in the home. The Landlord's Agent agrees that the Tenants should be reimbursed for the \$6,000.00 that the Tenants have already paid to the tradespeople to complete the drywall replacement, painting and other repairs. The Landlord's Agent asked that the Tenants forward to him all invoices of this work.

The Landlord's Agent stated the Landlord lives in another country and they are not able to transfer the requisite amount of money to Canada to cover the needed repairs. The Landlord's Agent denied that the Tenants were living in a construction zone home for five months.

## 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.

The applicable sections of the legislation and policy guideline for this matter follow.

### ***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

### ***Landlord and tenant obligations to repair and maintain***

- 32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) *complies with the health, safety and housing standards required by law, and*
- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

...

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

At the beginning of the tenancy, the Tenants lived in a home with many deficiencies. The Landlord and their property managers did not act quickly enough to deal with the ongoing problems that the Tenants were living in. The Tenants have organized and paid for repairs to the residential property. I find the Landlord has breached their responsibility to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and makes the home suitable for occupation by a tenant pursuant to Section 32(1) of the Act.

The Tenants stated they have paid \$6,000.00 for repairs out of their pocket; however, the Landlord's Agent agrees this amount should be reimbursed to the Tenants. The Tenants must forward all the invoices for the completed work to the Landlord's Agent. I award the Tenants **\$6,000.00** for the repairs they made out of their own pocket.

The Tenants also claimed five months rent as compensation for the ongoing treacherous situations in which they stated they endured in the home. The Landlord's Agent does not agree that the appropriate amount of compensation should be five months rent. The Tenants each have full time jobs, and they have two young children. Despite this, they decided to remain living in this residential property. The uploaded videos showed times where the temperatures in the home were less than a comfortable temperature, and some times when the Tenants were impacted by the flood of water in the home. The videos were not helpful for me to make a finding that the Tenants were severely impacted for five months. I do find the Tenants are entitled to an award of monetary compensation for the damage and loss they experienced at the beginning of their tenancy. I award the Tenants **\$22,228.50** which corresponds to three months rent.

As the Landlord's Agent agreed that the Tenants would be compensated for the drywall repairs, the Tenants withdrew their claim for compensation for the cost of emergency repairs. The Tenants' claim for emergency repair compensation is dismissed.

Should the Landlord fail to install a new roof this upcoming summer, the Tenants are at liberty to apply for a rent reduction for failing to provide this needed new installation.

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

The Landlord's Agent stated that if a monetary order is granted to the Tenants, that it would be more feasible for the Landlord to pay the debt off over time. The Director does not have the authority to order payment schedules, this can only be ordered by the Small Claims Court; however, the Parties can agree that the Tenants pay rent one month, then the following month they pay no rent, and continue this pattern until the debt is paid off.

If the Parties devise a payment plan, then both Parties are encouraged to keep accurate records of all payments made towards the monetary order debt. Should the Parties need additional direction, the Tenants may file the Monetary Order at the Small Claims Court for enforcement. Either party can apply for a payment schedule to be set by the Court for the remaining balance.

### Conclusion

I grant the Tenants a Monetary Order in the amount of \$28,228.50, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

The Tenants may withhold \$100.00 from next month's rent to recover their 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: February 12, 2023

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Residential Tenancy Branch