



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding STERLING MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RR, FFT

### Introduction

The Tenants applied for dispute resolution (“Application”) and seek the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”);
- to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act; and
- to recover the cost of the filing fee under section 72 of the Act.

Both Tenants and a witness, C.I., attended the hearing. The Landlord was represented at the hearing by four Agents, W.N., M.K., K.C. and K.L who all provided testimony. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. When referring to testimony of the parties, I shall use the collective term rather than the individual’s initials.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the “Materials”) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

### Preliminary Matter: Form of the Notice to End Tenancy

The Notice submitted into evidence by the Tenants was not an approved Residential Tenancy Branch form. Though the document had elements of text copied from the 10 Day Notice to End Tenancy for Unpaid Rent (RTB-30) Form, it was substantially

different from the approved form and therefore did not comply with section 52(e) of the Act which states that in order to be effective, a notice to end a tenancy given by a landlord must be in the approved form.

The Landlord Agent's testified that they were aware the Notice was not in the approved form and did not intend on acting on the Notice.

Given the above, the Tenants' request to cancel the Notice signed March 6, 2023 is granted. The Notice is of no force or effect.

#### Issues to be Decided

1. Are the Tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
2. Are the Tenants entitled to recover the filing fee from the Landlord?

#### 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 agreed on the following regarding the tenancy:

- The tenancy began on June 30, 2022.
- Rent is \$1,750.00 per month due on the first day of the month.
- A security deposit of \$875.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants still occupy the rental unit.

The Tenants testified as follows. On November 30, 2022 there was a flood in the basement of the rental unit. They could not reach the Landlord via telephone, and neither could the tenant in the suite below them. Two attempts at telephoning the Landlord were made by tenants of each suite. The tenant in the unit below then drove to the office to try and find an Agent for the Landlord to assist with the flood.

The Tenants telephoned C.I., a contractor and personal friend, to help them and they attended the rental unit. Agents of the Landlord arrived shortly after and assumed control of the situation.

The flood damaged the flooring of the basement leading to exposed nails and holes in the floor. As a result, the Tenants could not use the recreation room, bathroom and storage room which were all on the basement floor of the rental unit.

The Application initially requested an order for repairs to be carried out by the Landlord. Repairs were completed by the Landlord on February 18, 2023 which was 80 days after the flood. The Tenants then amended the Application to remove the request for an order for repairs and added a claim seeking to reduce rent as they were unable to use a portion of the rental unit while the repairs were completed.

The Tenants calculated the amount of square footage of the rental unit they were unable to use while the repairs were pending, multiplied by the daily rate of rent per square foot of the rental unit and then multiplied this figure by the number of days the repairs took to make. The rent reduction requested in the Application is \$859.95 which is based on a time period of 65 days for the repairs to take place. The Tenants confirmed they wish to claim for the full 80 day period the repairs took.

The Landlord's Agents testified as follows. The downstairs tenant was the first party to make contact with the Landlord on November 30, 2022. The Landlord arranged for their contractors to attend the rental unit and they arrived to find the sump pump in pieces and unplugged. C.I. had apparently worked on the pump and left the rental property without providing information about what they had done so it took the contractor longer to fix the sump pump, but they managed to do it eventually.

The Landlord contacted the owner of the rental property advised of the requirement for repairs. The insurers of the rental property were also notified. Approval for the repairs to the flooring was given in January 2023 and they were finished on February 18, 2023. As the damage to the lower unit were more severe, repairs to that unit were given priority.

The calculations and methodology behind the request to reduce rent put forward by the Tenants were not disputed, though the Landlord's Agents argued that not every square foot of the rental property was of equal value. They stated that the recreation room was of lower value than other areas of the rental unit. I was asked to consider this when making my decision.

In response to the Landlord's Agents testimony, the Tenants testified that the recreation room is their storage room, utility room and there is a bathroom in the basement which they could not use. They stated the discharge pipe from the sump pump was not winterized and was clogged with ice, causing the flood.

The Tenants called their witness, I.C., and asked them what they did to the sump pump when they arrived at the rental unit. I.C. testified that they found water on the floor of the basement when they arrived. They turned off the water supply and unplugged the sump pump so it would not burn out. They noticed the discharge pipe, which was 20 feet long and not up to code, had no water coming out and therefore thought it must be blocked. They noticed it was iced up and went back along the pipe to find the leak. They were at the rental property for around 20 minutes.

The Landlord's Agents did not put any questions to I.C., though after I.C. had left the hearing, they stated they were at the rental property for 10 minutes, not 20 as claimed, and reiterated that the sump pump had already been taken apart when the Landlord's contractors arrived.

### Analysis

The Tenants argue that the Landlord failed to carry out repairs following a flood at the rental property. Section 32(1) of the Act states that 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.

Based on the undisputed testimony of the Tenants, I accept that an ice blockage in the sump pump at the rental property caused a flood in the basement level and rendered the level unusable between November 30, 2022 and February 18, 2023. Given this, I find, on the balance of probabilities that the cause of the flood and failure to repair is a breach of the Act by the Landlord.

Section 7(1) of the Act states that a landlord must compensate a tenant if they do not comply with the Act. Section 7(2) of the Act states that a tenant that claims compensation following a landlord's breach of the Act, they must minimize any damage or loss. Based on the testimony of both parties, I am satisfied that the Tenants acted promptly in contacting the Landlord to notify them of the flood and limit any damage.

There is also nothing to indicate to me that the Tenants caused the flood. Therefore, I find the Tenants are entitled to compensation from the Landlord.

Section 65 of the Act states that if a landlord has not complied with the Act, an arbitrator may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

The Landlord's Agent did not dispute the Tenants' calculations regarding the square footage of the rental unit affected, though argued the affected areas were of lower value than the rest of the rental unit. I accept that there may be instances where this is the case, and that some residential properties will have areas within them that are, for example, used more frequently than others or hold a higher level importance than others.

However, in this case, I accept the Tenants' convincing testimony that the level of the rental unit affected by the flood contained a bathroom, storage space and functioned as a recreation and utility room which I find are of significant importance and value.

Therefore, I find that the overall value of the area affected by the flood was of equivalent value to the rest of the rental unit and therefore the rent per square foot should be considered equal.

As monthly rent is \$1,750.00, daily rent is \$58.33 (\$1,750.00 divided by 30). The parties agreed that the repairs took place on February 18, 2023 which is 80 days after the flood which took place on November 30, 2022. I accept the Tenants' undisputed testimony that the total area of the rental unit is 1796 square feet and that 406 square feet of the rental unit was affected by the flood, which is equivalent to 22.6% of the total rental unit.

Therefore, the daily rent for the affected area of the rental unit is \$13.18 per day (22.6% of \$58.33) and as the repairs took 80 days to complete, I find the reduction in value of the tenancy agreement to be \$1,054.93 (\$13.18 multiplied by 80).

Therefore, under section 65(1)(f) of the Act, I grant the Tenants' Application and authorize the Tenants to reduce a future rent payment by \$1,054.93.

As the Tenants Application was successful, I authorize the Tenants to recover the \$100.00 filing fee from the Landlord. The Tenants' entitlement is summarized below.

<b>Item</b>	<b>Amount</b>
Rent reduction	\$1,054.93
Filing fee	\$100.00
<b>Total</b>	<b>\$1,154.93</b>

Conclusion

The Tenants' Application is granted.

The Tenants may make a one-time deduction of \$1,154.93 from a future rent payment.

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: May 19, 2023

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Residential Tenancy Branch