



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      RR, RP, FFT

### Introduction

This matter was adjourned to written submissions following a hearing on April 14, 2023 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- an order to reduce rent by \$30,847.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

By an interim decision dated April 14, 2023 (the "Interim Decision"), I adjourned this matter to written submissions with a deadline of April 21, 2023. This decision should be read together with the Interim Decision.

### Preliminary Matter – Service of Dispute Resolution Materials

The parties uploaded written submissions and proof of service of evidence and written submissions as per the instructions in the Interim Decision. I find the parties were sufficiently served with each other's evidence and written submissions pursuant to section 71(2) of the Act.

### Issues to be Decided

1. Are the Tenants entitled to a rent reduction?
2. Are the Tenants entitled to an order for the Landlord to make repairs?
3. Are the Tenants entitled to reimbursement of their filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on August 1, 2022 for a fixed term ending on July 31, 2023. Rent is \$4,600.00 due on the first day of each month. The Tenants paid a security deposit of \$2,300.00. A copy of the tenancy agreement has been submitted into evidence.

Section 3(b) of the tenancy agreement indicates that parking for two vehicles and a “parking stall charger” are included in the monthly rent.

The Tenants submitted that at the time they signed the tenancy agreement with the Landlord, they were told the Landlord would be able to provide electric vehicle (EV) charging. The Tenants argued that EV charging was the most important condition for the Tenants to enter into the tenancy.

The Landlord did not have EV charging installed at the parking stalls associated with the rental unit at the start of the tenancy. According to the Tenants, they gave the landlord some time to communicate with the strata management about setting it up, as the Landlord had promised the Tenants that she could do it. The Tenants were later told by the Landlord that it was not possible to install EV charging.

The Tenants described the inconvenience of not having access to EV charging. The Tenants submitted that two free EV chargers located 1.7 km away from the rental unit are always occupied, so the Tenants have to wait in their car for an opening, which takes hours. The Tenants submitted that these chargers charge 26 km per hour and are limited to a maximum of 3 hours with no overnight parking. The Tenants submitted they have to wait in their car or walk 25 minutes to and from the rental unit, including during fall and winter months. The Tenants submitted that they sometimes have to leave with their car uncharged. The Tenants submitted that there are also free charging stations available at a shopping mall approximately 20 km away from the rental unit, but these stations usually don't have spots during the daytime and are subject to long waiting times. The Tenants submitted that they have suffered profound stress due to not having access to EV charging at the rental property. The Tenants argued that they would not

have signed the tenancy agreement if they were not promised and guaranteed an EV charging in their parking stalls.

According to their application, the Tenants request that the tenancy be revoked, the Landlord to refund the rent and security deposit paid, and to compensate the Tenants for their moving expenses.

The Tenants seek a rent reduction of \$30,847.00 as follows:

<b>Item</b>	<b>Amount</b>
Moving Expenses (U-Haul U-Box)	\$3,357.90
Moving Expenses (U-Haul Truck)	\$189.52
Rent (\$4,600.00 × 5 months)	\$23,000.00
Security Deposit	\$2,300.00
Estimated Moving Out Expenses	\$2,000.00
<b>Total</b>	<b>\$30,846.52</b>

The Landlord submitted that prior to the commencement of the tenancy, she had toured the property with the Tenants' friend, P, and a member of the concierge team, JC. The Tenants did not attend this tour. At that time, the rental property was newly built. According to the Landlord, P asked about EV charging at the Landlord's parking stall, and was told by JC that the building has one or two free shared sockets for every four or five parking stalls. JC further stated that if an owner wants to install their own socket, they would just need to make an application to the strata and pay a \$300.00 installation fee.

The Landlord explained that she agreed to apply for an EV charging socket and this information was relayed to the Tenants. The Landlord submitted that the Tenants were in a hurry to sign the tenancy agreement.

The Landlord submitted that she made many efforts to try to communicate with the strata, customer service, and the developer about installing the EV charging over several months. The Landlord submitted some correspondence into evidence.

The Landlord submitted she also tried to propose various solutions to the Tenants, such as reducing a portion of the monthly rent or providing the Tenants with a garage fob to access neighbouring properties owned by the Landlord for charging. The Landlord testified that the Tenants chose to ignore her and stopped paying rent in January 2023.

The Landlord referred to another dispute resolution proceeding regarding the Tenants' unpaid rent (see file number on the cover page of this decision).

The Landlord indicated that even if the Tenants do not choose the nearby charging stations and go to the shopping mall to charge while doing their shopping, she would estimate a monthly rent reduction of \$200.00.

The Landlord explained she was eventually told by building management that due to voltage issues with the building, it would be impossible to install more charging outlets on individual residents' parking stalls. The Landlord states that owners are considering taking action to pressure the developer and are hiring a company to do an appraisal of the building electricity and voltage.

The Tenants denied that they have access to the shared outlets in the building parkade, as those are claimed by other residents.

### Analysis

#### *1. Are the Tenants entitled to a rent reduction?*

Although the Tenants have articulated their claim as one of rent reduction, the Tenants effectively seek a refund of all rent they have paid to the Landlord since the start of the tenancy, a refund of the security deposit paid, and compensation for moving expenses into and out of the rental unit.

The Tenants argue that they are entitled to "revoke" the tenancy agreement on the basis that EV charging was not provided by the Landlord.

However, I find the tenancy agreement only indicates that "parking stall charging" is included in the rent. I find nothing in the tenancy agreement states that the provision of EV charging by the Landlord is a condition precedent to the formation of the tenancy, such that the tenancy agreement only becomes binding upon the fulfillment of this condition. I find the tenancy agreement was a binding contract upon being signed by the parties.

I find that while required to be provided by the Landlord under the parties' tenancy agreement, EV charging is not an essential service to the Tenants' use of the rental unit as living accommodation. Moreover, I am not satisfied that the inclusion of EV charging

in the rent was a material term of the tenancy agreement. I find the Tenants knew or ought to have known through their friend, P, that the Landlord did not have EV charging installed in the Landlord's parking stalls prior to signing the tenancy agreement. I find the Tenants nevertheless signed the tenancy agreement and were content to wait for the service to start. I find the Tenants were inconvenienced by not having EV charging at the property, but have continued to reside in the rental unit while accessing alternatives for EV charging.

I find there is insufficient evidence to suggest that the Tenants were otherwise unable to make full use of the rental unit and common areas, or access the two parking stalls and other facilities included in the rent. I find the Tenants received substantially what they bargained for under the tenancy agreement.

Based on the foregoing, I am not satisfied that the Tenants are entitled to terminate or repudiate the tenancy agreement.

Nevertheless, I find the Landlord to be in breach of the tenancy agreement by not being able to provide EV charging as agreed upon. I find the existing sockets in the parkade are not likely to be easily accessible from the parking stalls rented to the Tenants. I find the owners of parking stalls directly adjacent to those sockets are unlikely to welcome the Tenants trying to charge their vehicles there. I also find that regular sockets are not likely to be effective for EV charging.

I accept the Tenants have suffered a reduction in the value of their tenancy due to not having an EV charger at their parking stalls or elsewhere at the rental property designated for their use.

Under section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may make an 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.

I find the Landlord did not providing the Tenants with EV charging as required in the tenancy agreement. I find that a monthly rent reduction of \$200.00 would be reasonable in the circumstances.

Pursuant to section 65(1)(f) of the Act, I order that the Tenants are entitled to a rent reduction for EV charging at \$200.00 per month. This rent reduction shall be applied

retroactively from the beginning of the tenancy and continue until EV charging is installed at the Tenants' parking stalls or is otherwise made available to the Tenants at the rental property. Past rent reduction totals \$2,000.00 (\$200.00 × 10 months, from August 1, 2022 to May 31, 2023). Once EV charging is installed or otherwise made available to the Tenants at the rental property, the \$200.00 per month rent reduction shall no longer apply commencing the month after such facility has been installed or made available to the Tenants.

The remainder of the amounts sought by the Tenants for rent reduction is dismissed without leave to re-apply.

*2. Are the Tenants entitled to an order for the Landlord to make repairs?*

Under section 32(1) of the Act, 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.

I find the installation of EV charging facilities to not be in the nature of repair or maintenance work. I find a lack of EV charging does not mean that the property no longer complies with health, safety, and housing standards required by law, or that it would be unsuitable for occupation by a tenant. I note that not all residential properties have EV charging facilities.

I further note the Tenants did not apply for the Landlord to provide a service or facility required under the tenancy agreement. In any event, as mentioned above, I do not find EV charging to be an essential service or a material term of the parties' tenancy agreement. I also accept the Landlord's evidence that the building management is not permitting owners to proceed with installation and that it is not possible for the Landlord to have the EV charging facilities installed at this time.

Based on the foregoing, I dismiss the Tenants' claim for repairs without leave to re-apply.

*3. Are the Tenants entitled to reimbursement of their filing fee?*

The Tenants have been partially successful in this application. I award the Tenants reimbursement of their filing fee under section 72(1) of the Act.

### Conclusion

Pursuant to section 65(1)(f) of the Act, the Tenants are entitled to a rent reduction of \$200.00 per month for lack of EV charging. Past rent reduction from August 1, 2022 to May 31, 2023 totals \$2,000.00 (\$200.00 × 10 months).

The Tenants' claim for reimbursement of their filing fee is granted under section 72(1) of the Act. The remainder of the Tenants' rent reduction claim and the Tenants' claim for the Landlord to make repairs are dismissed without leave to re-apply.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to withhold a one-time amount of **\$2,100.00** (\$2,000.00 + \$100.00) from rent payable to the Landlord for the month of June 2023 in full satisfaction of the Tenants' past rent reduction award and the Tenants' filing fee.

The Tenants are further authorized to deduct **\$200.00** from rent each month starting in June 2023, until the month after EV charging facilities have been installed or otherwise made accessible to the Tenants at the rental property.

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: May 19, 2023

---

Residential Tenancy Branch