



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sutton Group  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, OLC, ERP, RP, LRE, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for return of all or part of the pet damage deposit or security deposit; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for an order that the landlords make emergency repairs for health or safety reasons; for an order that the landlords make repairs to the unit, site or property; for an order suspending or setting conditions on the landlords' right to enter the rental unit; and to recover the filing fee from the landlords for the cost of the application.

Both of the tenants as well as the named landlord and representatives for each of the landlord companies that have been named in the tenants' application attended the hearing. It was determined that some of the company landlords named are not landlords of the tenants and were excused from the hearing, and I amend the application to remove those companies as parties to this dispute. The tenants and the named landlord each gave affirmed testimony, however the agent for the remaining landlord company did not testify. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the tenants agreed that since the tenancy has not yet ended the application for return of the pet damage deposit and security deposit is premature, and that application is withdrawn.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for work that the tenants completed in the rental unit and for repairs not completed by the landlords?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to provide and maintain rental property in a state of decoration and repair that makes it suitable for occupation by a tenant?
- Should the landlords be ordered to make emergency repairs for health or safety reasons?
- Should the landlords be ordered to make repairs to the unit, site or property?
- Have the tenants established that the landlord's right to enter the rental property should be suspended or that conditions should be ordered?

### Background and Evidence

The first tenant testified that this month-to-month tenancy began on April 15, 2011 and the tenants still live in the rental unit. Rent in the amount of \$1,100.00 per month was payable in advance on the 1<sup>st</sup> day of each month but was reduced by the landlord starting in September or October, 2014 to \$850.00 per month because of numerous repairs required to the rental unit. The tenants did not pay the landlord a security deposit because the parties agree that the tenants would paint in the rental unit in lieu of a security deposit, however the landlord collected a pet damage deposit at the outset of the tenancy; the tenant is not sure how much. No move-in condition inspection report was completed.

The tenant further testified that the electrical panel in the rental unit is not properly attached to the wall and hangs off the wall. Also, the plaster is coming off the ceiling in the kitchen consisting of a 2 by 2 foot area due to a previous leak. The drain pipe in the kitchen sink is not affixed properly and is propped up with paint cans.

The tenant also testified that in August or September, 2014 a heavy rain caused water to back up and a flood occurred. Prior to that, the tenant started having breathing problems. The landlord replaced a board in the cupboard under the sink and the tenant told the landlord to use bleach, but the landlord painted it using regular acrylic paint and severe mold came back. After the flooding, the cabinets were removed and the restoration company found ¼ inch thickness of mold under all of the cabinets due to the long-standing issue of the leaking drain pipe.

The tenant also testified that the living room floor was also damaged in the flood. The tenant sopped up as much as he could with a shop-vac right away. The laminate was replaced in February or March last year, but left an uneven board by ½ inch which has left a tripping hazard. The landlord has been notified but it's never been rectified.

Further, the back balcony was damaged with rotted boards which started to lift and couldn't be nailed back down because there was no structure to affix it to. The tenant has emphysema and nerve damage from an accident so could not deal with it, so the tenant's wife took the balcony apart and took boards to the local landfill. It was quite a process, and the tenant talked to the landlord who agreed to reduce the rent and complete repairs. The rent has been reduced but no repairs have been made and the balcony is now a mud patio and embarrassing.

The tenant also testified that there has been no proper floor in the upper bathroom for 3 years. The tenant's wife took off 2 layers of plywood and replaced them and re-cemented but the house has shifted and within a week the concrete cracked. It still remains a cracked concrete floor. The tile that was there at the beginning of the tenancy was cracked with sharp and broken pieces and full of black mold.

The lights in both bathrooms are not screwed in or supported and are hanging from the walls.

The showers haven't worked since 2011. The plumbing needed to be fixed from the beginning of the tenancy. The tenants replaced whole faucets and the shower and deducted about \$440.00 from rent to cover the costs. The landlord had done some repair but not a proper repair and it still dripped and drained into the kitchen below.

The bathroom sink upstairs isn't attached to the counter top. The tap is the pull-up type and when it's pulled up, the whole sink raises.

Weather stripping and door frames are non-existent, and a 5 by 5 foot hole remains in a wall. The tenants completed numerous repairs and seek monetary compensation in the amount of \$2,020.00 based on minimum wage.

The second tenant testified that the rent was reduced 8 or 10 months ago. The tenants didn't pay rent for the first 2 weeks of the tenancy, which was the last 2 weeks of July, 2011 because the rental unit was in a shambles, dirty and smelled of wet dog. Then the tenants paid the landlord \$1,650.00 for May's rent and the security deposit. After a couple of weeks the landlord requested a pet damage deposit and the tenants paid \$200.00. The rental complex consists of townhomes with well over 100 units.

The tenants intended to purchase the home and worked on it with that in mind, but it has not been acknowledged by the landlord. The tenant showed the landlord all the work done and feels that the landlord used the tenant to make repairs so the tenant stopped. The house cracked again and the landlord told the tenants they had to move out because the landlord had to do renovations.

The tenant also testified that the stove doesn't always work either due to lack of power or power surges. Also, a light exploded in the kitchen after the landlord did a poor repair job. There has been no electricity in the kitchen or the hall leading to the upper level for about 2 months. The landlord will not call a professional, but wrecks the work the tenant completes or does a poor job.

The tenants' monetary claim is based on \$20.00 per hour and have provided a listing of hours spent completing some of the repairs. The tenants seek an order that the landlord have the home inspected by a professional home inspector for drainage issues, to replace the back balcony, have the electrical work done by a qualified electrician, repair the laminate flooring to remove the tripping hazard, repair heaters in the lower level and complete all other repairs.

The landlord testified that the tenants were going to update the kitchen so April's rent was free. Then the landlord reduced rent for about 10 months.

Most of the complaints of the tenants are side issues from the flooding that occurred, and the landlord did pay for the new flooring.

The landlord has already served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property so that the landlord can complete the major repairs that will require the rental unit to be vacant. A copy of that notice has been provided and it is dated January 10, 2015 and contains an expected date of vacancy of March 30, 2015. The reason for issuing the notice is: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The landlord agrees to complete all of the emergency repairs, as well as the plumbing, heat and electrical work which could be done next week.

The landlord also testified that the tenants never complained or told the landlord of the repairs required, and haven't allowed the landlord in for 4 months.

The landlord stated that rent was reduced so the tenants would do the repairs.

## Analysis

The *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant and complies with the housing standards required by law. The landlord testified that rent was reduced so that the tenants would complete the repairs, and then testified that it was for the tenants' agreement to refinish the kitchen, but both are contrary to the *Act*. However, the tenant also testified that the intent was to eventually buy the home so a number of the repairs were done voluntarily by the tenants. With respect to the reduction in rent, the first tenant testified that it was due to the number of repairs required and was reduced about 10 months ago. The other tenant testified that rent was reduced 8 or 10 months ago and no rent was paid, by consent for the first 2 weeks of the tenancy due to the soiled nature of the unit. In the circumstances, I find that the reduction in rent was to compensate the tenants for the living conditions which reduced the market rent payable.

The landlord has issued a notice to end the tenancy at the end of March, 2015, and that matter is not before me. However, I can not conclude whether or not the tenancy will in fact end at that time. The landlord agreed during his testimony to make the emergency repairs as well as the plumbing, heat and electrical work which could be done next week, and I order the landlords to complete the following repairs by the end of February, 2015:

- retain the services of a professional electrician to
  - repair the electrical panel and ensure it is properly attached to the wall;
  - repair the lights in both bathrooms and ensure all are supported and not hanging from the walls;
  - inspect the stove and inspect the cause of a lack of power or power surges;
  - repair the light and electrical sockets in the kitchen;
  - repair the electrical sockets and light in the hall leading to the upper level;
  - repair the heaters in the lower level;
- repair the plaster on the ceiling in the kitchen;
- repair the hole in the wall;
- retain the services of a professional plumber to
  - attach the drain pipe in the kitchen sink;
  - repair the showers;
- repair the tripping hazard of the uneven laminate board;
- replace the balcony;
- replace weather stripping on the outside doors;
- attach the bathroom sink upstairs to the counter top.

The tenant also testified that there has been no proper floor in the upper bathroom - but the house has shifted and within a week the concrete cracked. The landlord testified that some of the work will require major renovations and I accept that. I further find that if the concrete cracks, the home needs to be inspected by a professional home inspector for drainage issues as well as other issues. I leave that to the landlords to protect the investment.

The tenants also seek monetary compensation for the work completed by them in the rental unit. In order to be successful in such a claim, the onus is on the tenants to satisfy the 4-part test:

1. That the loss exists;
2. That the loss exists as a result of the landlord's failure to comply with the *Act*, regulation or tenancy agreement;
3. The amount of such loss; and
4. What efforts the tenants made to mitigate, or reduce such loss.

With respect to the first element, there is no dispute that the tenants' work has been futile and has ultimately had little effect. I also find that this has been a lengthy tenancy and the tenants have not had the full benefit of enjoyment of the rental unit, and element 1 has been satisfied.

Having found that the landlord has failed to comply with the *Act* respecting maintenance and repair, I am satisfied that the tenants have established element 2.

The tenants claim is \$2,020.00 and the first tenant testified that it was based on minimum wage and the other testified that it was based on \$20.00 per hour. I accept that it was based on the writer's amount of \$20.00 per hour in the documentation, and I find that amount to be reasonable. Any hired service to complete such repairs would not be less in my opinion, and the tenants have provided a detailed list of hours spent on repairs completed by them.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, the tenants' application for return of the security deposit and pet damage deposit is hereby dismissed, with leave to reapply after the tenancy has ended pursuant to Section 38 of the *Residential Tenancy Act*.

I hereby order the landlord to make the following emergency repairs and other repairs by the end of February, 2015:

- retain the services of a professional electrician to
  - repair the electrical panel and ensure it is properly attached to the wall;
  - repair the lights in both bathrooms and ensure all are supported and not hanging from the walls;
  - inspect the stove and inspect the cause of a lack of power or power surges;
  - repair the light and electrical sockets in the kitchen;
  - repair the electrical sockets and light in the hall leading to the upper level;
  - repair the heaters in the lower level;
- repair the plaster on the ceiling in the kitchen;
- repair the hole in the wall;
- retain the services of a professional plumber to
  - attach the drain pipe in the kitchen sink;
  - repair the showers;
- repair the tripping hazard of the uneven laminate board;
- replace the balcony;
- replace weather stripping on the outside doors;
- attach the bathroom sink upstairs to the counter top.

I further order the landlord to comply with the *Residential Tenancy Act* by giving the tenants at least 24 hours written notice to enter the rental unit for any purpose including for the purpose of making repairs unless the tenants otherwise agree.

I further grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,070.00.

These orders are final and binding and may be enforced.

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: February 06, 2015

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Residential Tenancy Branch

