



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAYFAIR COURT  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      ERP RP O FF

### Preliminary Issues

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include **full particulars** of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations [my emphasis added].

Upon review of the Tenant's application for dispute resolution I noted that the Tenant had written an amount of \$450.00 beside the sentence "The request for a Monetary Order is for the following amount." The Tenant did not indicate on his application what the \$450.00 was being claimed for; he did not submit a Monetary Order worksheet outlining what the claim was comprised of; nor did he provide a description of the monetary amount in the Details of the Dispute.

During the hearing the Tenant submitted that his monetary claim was to recover costs for materials and paint he had purchased for the rental unit back in 2014. He stated that the Landlord had not previously agreed to reimburse him for those costs.

Based on the above, I find the Tenant did not disclose the full particulars of his claim on his application, pursuant to section 59(2) of the Act. As a result, the respondent Landlord did not know the details of that monetary claim prior to attending the hearing. Accordingly, I dismissed the Tenant's monetary claim, without leave to reapply and I proceeded to hear the remainder of his application.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on February 13, 2015, to obtain an Order to have the Landlord make emergency repairs for health or safety reasons; to Order the Landlord to make repairs to the unit, site or property; for other reasons; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Does the rental unit require emergency repairs or other repairs?
2. If so, should the Landlord be ordered to complete those repairs?

#### Background and Evidence

The undisputed evidence was that the Tenant has occupied this rental unit for over 20 years, after moving from another unit in the building back in 1994. Rent was increased March 1, 2015, from \$883.00 to \$905.00 and is due on or before the first of each month. When the Tenant first began to occupy a unit in this building, in 1994, he paid \$320.00 as the security deposit which was transferred to his current tenancy.

The building was described as being an older wood frame construction apartment building with three floors. All units are rental units and the Manager has managed this building since 2008. The Tenant's rental unit is a 2 bedroom apartment located on the third floor.

The Tenant submitted that he now understood that his requests for repairs did not meet the requirements of emergency repairs. As a result he withdrew his request for an order to have emergency repairs completed.

The Tenant testified that his past requests for repairs have gone unanswered so on January 14, 2014 and February 17, 2014 he put his requests in writing, as provided in his evidence. When his requests for painting went unanswered the Tenant said he purchased paint and painted all the walls and ceilings himself in the spring of 2014.

The Tenant stated that although his carpet has since been replaced, he was not included in choosing the design and quality as he requested. He also submitted in evidence and in his testimony that the following requests have not been completed:

- 1) Patio door –gap between door and frame causes a draft and needs repair.
- 2) Fridge – needs replacing as it is old, non-efficient, rusty, and has a broken seal and shelf). Landlord wanted to replace with another used fridge; however

- the Tenant said he would not accept a used fridge that was previously used by a neighbouring rental unit, instead he wants a brand new fridge.
- 3) Bathroom vanity needs replacing. The Landlord has since supplied a new sink and faucet, which the Tenant installed.
  - 4) Kitchen cabinet and counter are “old and tired” and have some water damage and need replacing.

In support of his claim, the Tenant submitted copies of the following: a written statement; 13 photographs that were taken sometime in 2014, and invoices for paint and hardware materials from March and May 2014.

The Landlord testified and provided a written statement that the Tenant’s carpet had been replaced on March 6, 2014. He argued that when he inspected the rental unit the walls and ceilings had already been painted by the Tenant so they do not need painting again. As for the remaining repair requests, the Landlord provided the following arguments which were supported by the Landlord’s written submission and photographs that were taken February 26, 2015 and provided in his evidence:

- 1) Patio door can be opened and locked and is in good shape. It does not need replacing or repaired. The Landlord argued that the gap is the result of the building settling over time. He said the Tenant does not pay for heating; therefore, the gap in the door is not an issue that needs to be repaired.
- 2) Fridge – The Landlord stated that he hired a repair person but the fridge could not be repaired. The Landlord offered a replacement fridge, one of several used fridges they have available, but the Tenant refused the offer of a used fridge, insisting on a brand new fridge.
- 3) Bathroom vanity does not need replacing as it still functions. The Landlord supplied a new sink and faucet in 2014, which the Landlord had installed, not the Tenant.
- 4) Kitchen cabinet and counter are original but are in excellent shape as supported by the photographs. They do not need replacing.
- 5) The walls are in excellent condition and do not require painting at this time as the Tenant painted them in 2014.

The Tenant confirmed that the Landlord had not agreed to pay for paint or supplies prior to him painting the rental unit. The Tenant also submitted that the Landlord did not previously agree to compensate him for his labour to install the bathroom sink, taps, or to repair any other items. He argued that the patio door should still have to be fixed because the gap causes a draft which is uncomfortable.

In closing, I reminded the Tenant that despite him residing in his rental unit for over twenty years, he still needs to put all requests for repairs and maintenance in writing to the Landlord and not take action on his own. If the Landlord refuses to take action then the Tenant needs to seek a remedy through the Residential Tenancy Branch.

## Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 32 of the *Act* requires a landlord to 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.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the Landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the rental unit would deteriorate occupant comfort and the long term condition of the building.

62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

Upon review of the above, I accept the Tenant's submission that the gap in the patio door needs to be repaired, regardless of who pays the heating bills. A cool draft coming through the door most certainly can reduce the quiet enjoyment of a rental unit, especially when that draft is coming into the main living space of the rental unit. Accordingly, I order the Landlord to repair the gap in the patio door, in a manner that meets the requirements of section 32 of the *Act*, no later than **April 20, 2015**.

Residential Tenancy Policy Guideline # 1 stipulates that a landlord is responsible for repairs to appliances provided under the tenancy agreement. The evidence supports that although the fridge is operational; it is leaking rusty water over the Tenant's food and cannot be repaired. The Landlord attempted to have the fridge repaired and was told it could not be repaired. The Landlord attempted to have the fridge replaced with a used fridge but the Tenant refused.

Notwithstanding the Tenant's insistence of getting a brand new fridge, there is no provision in the *Act* that stipulates a landlord must replace a broken appliance with a brand new one. The Policy simply says the Landlord must repair the appliance. Accordingly, I accept that Landlord's submission that he is only required to provide the

Tenant with a replacement fridge that is clean and operational, and it is his choice if he wishes to replace it with a used one or a new one. Therefore, if the Tenant wishes to have his fridge replaced, the Tenant must advise the Landlord of this request, in writing. Upon receipt of the Tenant's written request, the Landlord will be required to comply by providing the Tenant with a clean, unbroken, replacement fridge, **within two weeks** from receiving the written request.

Upon review of the photographic evidence it is undeniable that the Tenant takes great pride in caring for his home, keeping it clean and well maintained. It was undisputed that the kitchen cupboards, counter, and bathroom vanity cabinet are original and are an outdated style, or "old and tired" as described by the Tenant. That being said, I find that despite those items being cosmetically less appealing they are still fully functional and can still be used for their intended purpose. Therefore, I find there is insufficient evidence to prove that the cupboards, counter, and vanity require repair or replacement, and the request is hereby dismissed, without leave to reapply.

The Tenant has only partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **\$25.00**.

#### Conclusion

The Tenant withdrew his request for an order to have emergency repairs completed.

I HEREBY ORDER the Landlord to conduct repairs, as ordered above, pursuant to section 62 of the Act.

The Tenant may deduct the one time award of **\$25.00** off of his next rent payment, as full satisfaction of recovery of his filing fee, pursuant to section 72(2)(a) of the Act.

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: March 18, 2015

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Residential Tenancy Branch

