



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, OLC, RR, MNDC, FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order requiring the landlord to make repairs to the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, for an order allowing a reduction in rent, for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

The tenant, one of the landlords, and the landlord's agent attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-The evidence showed that the tenant listed the surname of the landlord "SK" incorrectly. I have amended the tenant's application showing the correct spelling of SK's name, as reflected in the evidence.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit and to comply with the Act?

Is the tenant entitled to a reduction in monthly rent, monetary compensation, and to recovery of the filing fee paid for this application?

### Background and Evidence

The tenant submitted that this tenancy began on May 1, 2015, that monthly rent is \$1250.00, due on about the 7<sup>th</sup> day of the month, and that she paid a security deposit of \$625.00.

The landlord's agent (hereafter "landlord" as the attending landlord did not provide evidence) stated that monthly rent was due on the 1<sup>st</sup> day of the month. The landlord's agent was the son on the landlords, and landlord "JG" was out of the country at the time of the hearing, not available to testify.

There was no written tenancy agreement for this tenancy.

In support of her application requesting repairs to the rental unit, the tenant submitted that she negotiated full use of the driveway, and instead has not had full access as the tenants living in the lower rental unit have parked their cars there, blocking her agreed upon space.

The tenant submitted further that she has had issues with the smell in her rental unit, possibly caused by mould, and that the landlords have failed to address the problem, instead offering homemade remedies such as boiling water with spices. The tenant submitted that the smell has ruined her clothes, that she moved her clothing into storage, and that she cannot work from home.

The tenant submitted further that the electrical breaker panel was located in the lower rental unit, and that at times, she has been without power for hours when the breaker tripped. An example given by the tenant was the use of her vacuum caused the breaker to trip.

The tenant submitted that the landlord has failed to respond to her requests to have the garbage removed, after the renovation, and that she does not have her separate garbage bin, instead sharing it with 6 other tenants. The tenant confirmed that the garbage was removed the week prior to the hearing.

The tenant submitted that the wooden stairs leading to her rental unit were old and unstable, and that the landlord has refused to address this safety issue.

The tenant agreed that her primary issues dealt with the lack of full use of the driveway, garbage collection, and repair of the stairs.

The tenant's monetary claim is \$13,700.00, due to the alleged lack of response from the landlords regarding her requests for repairs.

The tenant's relevant evidence included, but was not limited to, photographs and, a written statement of claim.

In response to the tenant's application, the landlord the tenant was only given access to the right side of the driveway, not the full driveway, as the lower tenants were also entitled to partial use of the driveway.

The landlord submitted further that the main bathroom was renovated prior to occupancy of the suite, and that the garbage, which has now been removed, was due to the renovation.

The landlord submitted that he attended the rental unit and that the only identifiable smell was of burning scented candles.

The landlord's agent here submitted that he was pretty sure the stairs were stable, and that when his family moves in as anticipate in the near future, he would fix the stairs. The landlord submitted evidence prior to the hearing, not relevant to this application, that they had served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

The landlord further stated at the hearing he would have the stairs repaired or replaced.

The landlord's relevant evidence included, but was not limited to, a written statement, an email between the parties, and copies of photographs of the exterior of the rental unit.

### Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

Section 32 of the *Act* requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Under section 7(1) of the *Act*, if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the *Act*, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the *Act*, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

As to the issue of garbage collection, the evidence of both parties shows that the accumulation of garbage has now been collected and is no longer at issue.

Additionally, I find the tenant failed to supply proof that she suffered a loss due to an accumulation of garbage, as I find this issue has more of an esthetic value, and not a quantifiable loss. I therefore find this part of the tenant's claim lacks merit.

As to the smell in the rental unit as claimed by the tenant, I find the tenant submitted insufficient evidence to substantiate this claim. The tenant alluded to a mould smell, but did not provide proof that mould was present.

In the case of the use of the full driveway, as there was no written tenancy agreement, I was unable to conclude that the full driveway was a facility offered and agreed upon by the landlord in the tenancy agreement. I find it reasonable that if the landlord rents the lower portion of the home, those tenants were also granted access to some use of the driveway.

Overall, I was not convinced that the tenant's agreement included use of the full driveway.

As to the stairs, I found the landlord's testimony showed that the landlords have failed to properly inspect the stairs and to address a repair issue. The landlord's statement that he would have the stairs fixed when the tenant no longer lived in the rental unit showed a complete lack of awareness or concern of the landlord's obligation under the Act or of the safety of the tenant.

I additionally find the tenant submitted sufficient undisputed evidence that the stairs were unstable, due to her testimony and the landlord's admission that the stairs had not been inspected, and I therefore find that the stairs failed to meet the health and housing standards as required of the landlord by the Act.

Pursuant to section 62(3) of the Act, I therefore order the landlord to immediately replace or repair the tenant's stairs leading to the rental unit, no later than 1 week after receipt of this Decision.

As to the tenant's request for a reduction in her monthly rent, I find that the lack of response from the landlord to the tenant's requests and to inspect the stairs and make the necessary repairs have caused a diminished value of the tenancy for the tenant.

Residential Tenancy Branch Policy Guideline 6 states: "*in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed*".

As I have accepted that the landlord's failure to inspect the stairs to determine the safety of the stairs and to make the necessary repairs have diminished the value of the tenancy, I find it reasonable under the circumstances and I therefore order that the tenant's monthly rent be reduced by \$100.00 per month, effective immediately.

I authorize the tenant to reduce future monthly rent by \$100.00 until such time as the landlord has replaced or repaired of the wooden stairs leading to the rental unit, beginning November 2015, in the event the landlord has not replaced or repaired the stairs to the rental unit when this Decision is received. For clarity, if the landlord has replaced or repaired the stairs by the end of October 2015, the tenant's monthly rent for November 2015, is \$1250.00; however, if not, the tenant is directed to deduct \$100.00 from her monthly rent and to continue until the repairs to the stairs are made.

If the tenant is not satisfied with the repairs being made and continues to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that they have complied with this Decision in order to have the monthly rent restored.

Additionally, although the tenant submitted that she has requested repairs from the landlord since the inception of the tenancy, I could not find conclusive proof from the tenant as to the first instance of her requests, such as would be shown through dated, written requests. I therefore find it appropriate to grant the tenant a retroactive rent reduction from the month her application requesting repairs was made, or August 2015.

I therefore order the landlord to compensate the tenant in the amount of \$300.00, or \$100.00 per month retroactively from August 2015 through October 2015, the date of this Decision.

I also grant the tenant recovery of her filing fee of \$100.00, for a total monetary award of \$400.00.

To give effect to this monetary award, the tenant may deduct \$400.00 from her next, or a future month's rent, notifying the landlord of when the deduction is being made.

If for some reason the tenancy has ended prior to the tenant being able to redeem her monetary award of \$300.00, I am including with her Decision a monetary order for that amount pursuant to section 67 of the Act, which is of no force or effect if the tenant has been able to reduce her monthly rent by \$400.00.

The monetary order may be served upon the landlords for enforcement and may be filed in the Provincial Court of British Columbia (Small Claims) should enforcement become necessary.

As to the balance of the tenant's monetary claim of \$13,700.00, I find the tenant submitted insufficient evidence to support or substantiate this non-particularized claim

and due to the having granted her a monetary award for the substantiated part of her application, it is dismissed, without leave to reapply.

### Conclusion

The tenant's application for an order requiring the landlord to make repairs and for a reduction in her monthly rent has been granted.

The tenant's monthly rent is reduced by \$100.00, beginning in November 2015, and continues until the landlord makes the ordered repairs.

The tenant has been granted a retroactive rent reduction as described above.

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: October 19, 2015

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Residential Tenancy Branch

