



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, RP, ERP, OLC, MNR, FF, O

### Introduction

This hearing dealt with the tenants' application filed July 14, 2017, pursuant to the *Residential Tenancy Act* ("Act") for orders that the landlord make repairs and emergency repairs and comply with the Act, regulation or tenancy agreement. The application also sought an order reducing rent, compensation for the cost of repairs already made, and recovery of the application filing fee.

The landlord did not attend this hearing. One of the two named tenants attended the hearing on behalf of both of the tenants, and was given a full opportunity to be heard, to present affirmed testimony and documentary evidence and to make submissions.

The tenant testified that she served the application on the landlord by registered mail on July 17, 2017 and provided a receipt as evidence of service. In accordance with s. 90 of the Act, the landlord is deemed to have been served with the application on July 23, 2017, five days after its mailing.

At the outset of the hearing the tenant indicated that she had amended her application. A copy of that amendment, date stamped August 16, 2017, was before me. It indicates a changed monetary claim and includes a revised monetary order worksheet adding a claim for return of security and pet deposits, reimbursement for the days in June that the tenants were unable to occupy the rental unit (\$335.40), and rent for the months until October (\$2,400.00). However, the tenant stated that she had not served the landlord with the amendment. Accordingly, I cannot consider the amendment at this stage. The amendment and the additional monetary claims set out in the monetary order worksheet are dismissed, with leave to reapply.

On August 22, 2017, the tenant submitted another monetary order worksheet, claiming against the landlord for disposing of her belongings (an additional \$17,574.00). The tenant does not appear to have filed an amendment for this claim, and has not served the revised monetary order worksheet or any supporting evidence on the landlord.

Again, then, I cannot consider this additional monetary claim, and that claim is also dismissed with leave to reapply.

Also at the outset of the hearing the tenant advised that the rental unit was shut down by the municipal authority on or about July 19, 2017 and that the tenants are therefore no longer residing there. As a result the tenant withdrew the application for orders that the landlord comply, reduce rent, and make repairs and emergency repairs.

Issue(s) to be Decided

Are the tenants entitled to a monetary order?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided undisputed testimony as the landlord did not attend. She advised that this tenancy began in April of 2017 as a month to month tenancy with rent of \$800.00 due on the first Friday of each month. A security deposit of \$400.00 and a pet deposit of \$400.00 were paid at the beginning of the tenancy and remain in the landlord's possession.

Although he did not attend the hearing, the landlord submitted a tenancy agreement in evidence. It is consistent with the terms set out above, but it is unsigned by the landlord. The landlord also submitted a move-in condition inspection report. It is also unsigned by the landlord. The landlord's cover page describes these documents as "falsified" documents which the "tenants attempted to force landlord to sign through threats and intimidation."

The tenant testified that the landlord provided her with the tenancy agreement and condition inspection report forms, and that he asked her to fill them out because his vision is compromised owing to medical issues. She denies attempting to coerce the landlord into signing them, and says that although he provided them to her, he also suggested they were worthless. She further said that she filled out the tenancy agreement with the landlord, who fell asleep during this process, and that she and the landlord inspected the rental unit together, but that he would not sign the condition inspection report because he was angry at what she had written.

The tenant further testified that when she moved in the rental suite was in disrepair. Although she had viewed the suite before agreeing to rent it, it had been tenanted and it was dark when she did so. She and the landlord arrived at the suite together when it was time for her to move in and found it unclean and unsanitary. The landlord commented that he had not checked the condition of the suite after the prior renter had vacated.

The tenant testified that the carpet was soaked in urine and as she has a child who is crawling she had to clean it immediately. She further testified that there was mold on the walls, which she understood came from a flood upstairs. She also said that she had to disassemble and reassemble the door frame so that the door would properly close and lock because a prior renter had kicked it in. She also said that the suite was full of ants, and that she had to clean up piles of dead ants and set ant traps, and that the suite was entirely empty of lightbulbs.

The condition inspection report completed by the tenant is consistent with the tenant's evidence. The tenant also provided some photographs of the unit at move-in, including a photograph of a stove which she said was very dirty and moldy, and some photographs of the walls.

The tenant stated that she asked the landlord to address the condition of the unit once in writing, but he crumpled up her letter and said "I can't read that shit." Her verbal requests were ignored.

The tenant testified that she made inquiries with some cleaning companies but ended up cleaning the unit herself. In her original application she claims \$666.00 in total for cleaning and repairing the rental unit, calculated at a rate of approximately \$20.00/hour, which she testified is the rate she used to charge when she was in the cleaning business. The tenant is not claiming for the cost of materials, including cleaning supplies or ant traps.

The tenant further testified that she and her partner were subject to harassment by the landlord for the duration of the tenancy. They paid rent in cash and the landlord refused to issue receipts. The tenant also says that the landlord refused to sign the tenancy agreement or the move-in condition inspection report. The tenants gave written notice on July 11, 2017 effective October 31, 2017. A copy of that notice was in evidence.

She also testified that she and her partner were assaulted by the landlord on July 14, 2017, and were then away from the suite for several days in order to keep themselves

and their children safe. Photographs of the tenants with some physical injuries were in evidence.

The tenant stated that she served the landlord with her application filed July 14, 2017 by registered mail, and included a copy of a letter with their forwarding address for return of the deposits. A copy of this letter was in evidence.

The tenant said that she he returned July 19, 2017 and there was a “do not occupy” notice on the door from the municipality for “failure to comply with bylaws.” A photograph of the notice was in evidence.

The landlord alleged that the tenant’s partner had assaulted him, and had a restraining order against him, which the landlord had submitted in evidence. The tenant said that the charges against her partner have since been dropped, and that her partner did not assault the landlord. The tenant also said that because of the restraining order her partner could not help move.

The tenant said that when she returned to the rental unit the landlord had thrown away all of their belongings. She submitted an additional monetary order worksheet on August 22, 2017 claiming reimbursement for belongings in the amount of \$18,574.00.

The landlord’s cover letter indicates that he has included photographs showing the general state of the unit after it was “abandoned.”

### Analysis

Section 67 of the Act provides that a landlord who has breached the Act, regulation, or tenancy agreement must compensate a tenant for that breach.

Section 32(1) of the Act requires a landlord to provide and maintain residential property in a state of repair that is compliant with health, safety, and housing standards required by law, and makes it suitable for occupation by a tenant.

Based on the tenant’s affirmed and undisputed testimony, I find that the rental unit was unclean unsanitary and in need of cleaning and repair at the commencement of this tenancy. I accept that the carpet had urine on it, the walls and oven had mold on them, and the front door did not close or lock. Based on this, I find that the rental unit did not meet the health or safety standards required by law.

The landlord was therefore in breach of the Act, and the tenants are entitled to recover the costs of cleaning and repairing the unit in accordance with s. 67. I make a monetary award in their favour in the amount claimed for cleaning and repair (\$666.00).

As the tenants have been successful in their application, I also find that they are entitled to recover their filing fee of \$100.00 from the landlord. This results in a total monetary award of \$766.00.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of **\$766.00**.

The tenants are provided with this order and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with the order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The balance of the tenants' claims, as reflected in the amendment filed August 16, and in the revised monetary order worksheets, are dismissed with leave to reapply.

The landlord is reminded that s. 38 of the Act requires the landlord to refund the tenants their deposits or apply to the Residential Tenancy Branch for authorization to keep them within specific time lines (unless the tenants consent to the landlord's retention of the deposits.) A landlord in breach of this section of the Act can be required to pay the tenants double the amounts involved.

The landlord is also reminded that landlords are responsible for having written tenancy agreements and completing condition inspection reports.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act and is final and binding as per s. 77 unless otherwise specified by the Act.

Dated: September 26, 2017

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Residential Tenancy Branch