



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, MNDCT, RP, OLC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a reduction in rent? Is the tenant entitled to a monetary award as claimed? Should the landlord be ordered to make repairs? Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in November 2014. The current monthly rent is \$1,348.51 payable on the first of each month. The rental unit is a suite in a multi-unit building managed by a strata corporation. The building is approximately 50 years old.

The parties agree that the balcony of the rental unit required work to be done due to its age and presence of mold. The landlord arranged for work including removing the glass to convert the indoor balcony to an outdoor balcony, cleaning loose debris and painting of walls, ceilings and floors and installation of railings. The parties agree that the work occurred from May 2021 to September 2021 and the balcony was unusable during this time.

The parties testified that additional work is still needed on the balcony to allow for water drainage. The landlord said they are soliciting quotes and arranging for financing at this time. The landlord submits that the balcony is substantially completed and has been usable since work completed in September 2021.

The tenant testified that the balcony is unusable in its current condition with insufficient drainage. The tenant said that under normal circumstances they used the balcony occasionally, have stored items on the balcony and the loss of use of this portion of the rental unit has had some negative effect on the value of this tenancy. The tenant suggests that a reduction of \$100.00 from their monthly rent is appropriate.

Analysis

Section 32(1) of the Act provides that:

32 (1)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.

The parties acknowledge that the balcony repairs have not been completed. The landlord testified that they are currently seeking financing for these repairs and quotes from third parties in order to schedule the work. While I understand that the landlord has limited financial means to arrange for the work, I find their duties under the Act cannot be delayed indefinitely. I further accept that the nature of the outstanding work may be delayed by authorization from the strata corporation and the weather. While the parties gave evidence that the balcony is not so urgent an issue as to be considered emergency repairs I find it is necessary to complete the repairs in a timely manner.

Therefore, I find it appropriate to order that the landlord complete the repairs to the balcony by June 30, 2022.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

This section, in conjunction with section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the evidence of the parties that the balcony of the rental unit became unusable from May 2021 onwards. While the landlord claims that the balcony has been accessible and usable since September 2021 when the initial work concluded, based on

their own testimony about the nature of the outstanding work still required, I find the balcony has remained unsafe for use since the work commenced. The finding that the balcony is unusable is further supported in the testimony of the tenant and their documentary evidence including photographs and video footage. Based on the totality of the evidence, I find that the balcony of the rental unit became unusable in May 2021 and has remained unsafe and unusable ever since.

The tenant testified that they have had some negative impact on the value of their tenancy due to the inability to use the balcony. The tenant gave evidence that they would primarily use the covered balcony to store personal possessions and would occasionally sit on the balcony. The tenant suggests that a reduction of the monthly rent of \$100.00, approximately 7.4% of the rent is appropriate under the circumstances.

I find the tenant's suggestion to be somewhat excessive. Based on the evidence while the loss of the balcony has had some negative impact on the value of the tenancy it is clear that the impact has been minor, with the tenant able to carry on their daily routines without significant changes. The tenant's testimony is that they did not regularly use the balcony for purposes other than storage and would occasionally sit on the balcony. I accept the evidence that the tenant has had to store much of their personal possessions elsewhere and have had their daily routine somewhat interrupted by the ongoing presence of workers. Under the circumstances I find a reduction of 2.5% of the monthly rent to be appropriate.

I issue a one-time monetary award in the tenant's favour of \$337.10, for a retroactive rent reduction as follows:

Monthly Rent \$1,348.51 x 2.5% = \$33.71 x 10 months (May 2021 to February 2021) = \$337.10

In addition, the tenant is authorized to reduce their monthly rent by \$33.71 until such time as the balcony repairs are completed. Should a dispute arise as to the extent to which the repairs have been completed, I order that the rent remain at the reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with this decision.

Conclusion

The landlord is ordered to complete the repairs to the balcony by June 30, 2022.

I issue a monetary award of \$337.10 for the retroactive rent reduction. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$437.10 from their next scheduled rent payment.

The monthly rent for this tenancy is reduced by \$33.71 until such time as the landlord has completed the repairs ordered.

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 4, 2022

Residential Tenancy Branch