



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNDC

OLC

PSF

RP

RR

FF

### **Introduction**

- 1) This hearing dealt with an Application for Dispute Resolution by the tenant seeking the following::
  - A Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement;
  - An Order compelling the Landlord to comply with the Act, Regulation or tenancy agreement;
  - An Order compelling the Landlord to provide service or facilities required by law;
  - An Order allowing a Tenant to reduce rent for repairs, services or facilities agreed upon but not provided;
  - Reimbursement by the Landlord for the cost of the filing fee paid by the Tenant for this application;

### **Preliminary Matter**

In regards to the tenant's claim for reimbursement for the \$50.00 fee paid for filing this application, I find this to be a false claim. I find it is not a valid expenditure and that it must be dismissed as records verify that the tenant had applied for and received a full waiver for the application fee and is thus not validly entitled to make such a claim.

### **Issue(s) to be Decided**

- Has the tenant submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing :
  - a) that the damage or loss was caused by the actions of the landlord and in violation of the Act
  - b) a verification of the actual costs to repair the damage
  - c) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs
- Whether the tenant is entitled to a rent reduction under section 65(1) of the Act due to a loss of value of the tenancy. This determination is dependant upon answers to the following questions:
  - Has the tenant offered proof that the value of the tenancy was lowered sufficient to support a reduction in rent or compensation?
  - Has the tenant submitted proof that the landlord was responsible or that the landlord committed a violation under the Act?
- Whether the Landlord is in noncompliance with the Act and should be ordered to comply with the Act.
- Whether to landlord is failing to supply services and facilities required by law and should be ordered to do so.

## **Background and Evidence**

The Tenant submitted a lot of documents into evidence including a copy of the municipal health bylaw, flyers, receipts, photos, data on the prevention and treatment of bedbugs, communications from the landlord to the tenant, copies of communications from the tenant to the landlord and a copy of a dispute resolution decision between the tenant and this landlord dated May 25, 2005

The tenant also submitted into evidence copies of other dispute resolution decisions involving other parties as examples. However these were disregarded and were not considered in the determination of the matter before me. Previous decisions are based on the particular findings made and facts established for each individual situation and are not relevant.

The tenant testified that the landlord has failed to comply with the Act by not maintaining residential property in a state of decoration and repair that complied with the health, safety and housing standards required by law, as the Residential Tenancy Act requires.

The tenant alleged that the landlord also failed to follow a previous order issued by a dispute resolution officer in a decision dated May 25, 2005. The tenant was requesting monetary compensation for damages due to the landlord's violation of the Act and failure to comply with the previous order.

### **Background & Evidence - Monetary Claim for Bedbugs**

The tenant testified that the landlord was responsible for the tenant's expenditures in relation to the control of bedbugs in the unit. The tenant's position was that the landlord was guilty of violating a municipal health bylaw governing the landlord's responsibilities in relation to pest control in protecting tenants from, and preventing the proliferation of, bedbugs. The tenant testified that a unit in the building was infested with bedbugs in 2007 on the floor above the tenant and the landlord had engaged an exterminator to treat the outbreak without notifying the tenant and without treating the tenant's unit. The tenant testified that The tenant's position was that the actions of the landlord in this matter were not adequate as evidenced by the fact that the tenant's unit was later

infested by bedbugs in 2008. The tenant pointed out several paragraphs of the municipal health bylaw that the tenant felt the landlord did not follow which the tenant felt would then indicate that the landlord violated the section of the Residential Tenancy Act about the duty to maintain the rental unit in a state that met “health, safety and housing standards required by law”. The tenant acknowledged that as soon as the tenant reported the infestation in his unit to the landlord, the landlord immediately employed pest control services which successfully treated the tenant’s unit. However, the tenant feels that the infestation would not have occurred if the landlord had done a more thorough job in 2007. The tenant took issue with the fact that in 2007 the landlord did notify the tenant that the halls were being treated and also held the landlord responsible for not successfully preventing the bedbug infestations. The tenant presented evidence regarding each expenditure incurred by the tenant that, according to the tenant, stemmed directly from the landlord’s failure to comply with the Act, including the following: purchase of diatomaceous earth and a duster for its application, purchase of garbage bags and laundry detergent, purchase of vacuum cleaner bags, additional electricity used to launder clothing and linens, purchase of bug-proof mattress and box spring covers, cleaners and purchase of a steam cleaner. The tenant was claiming a total of \$538.26 compensation for the bedbug infestation.

The landlord testified that everything regarding the extermination was done without delay and according to health standards and the law by trained professionals in the field. The landlord’s position was that no violation of the municipal bylaw nor the Act occurred and that the landlord is not responsible for any of the expenditures being alleged by the tenant.

#### Background – Monetary Claim for Repairs

The tenant is also claiming reimbursement for repairs to the drywall completed by the tenant. The tenant’s position is that the landlord was aware that a contractor had failed to patch the wall after a new electrical panel was installed and after giving the landlord

an opportunity to do so, the tenant had patched the wall and repainted. The tenant stated that this was also done to address damage from a flood.

The landlord testified that the wall issue was minor and that the tenant did not make any application for dispute resolution nor did the tenant obtain an order to permit the tenant to complete the repair. The landlord testified that instead of following the Act, the tenant took it upon himself to do the repair and then demanded payment.

#### **Background and Evidence: Order Landlord to Comply**

The tenant testified that a previous order issued in 2005 required the landlord to maintain clean windows and the landlord subsequently failed to comply with this order. The tenant testified that, although his own windows were recently cleaned in August 2008, the remaining windows of the complex have not been cleaned since the initial cleaning which occurred just after the order was issued in 2005. The tenant testified that the landlord has repeatedly forced the tenant to file applications for dispute resolution because the landlord continually refuses to follow the Act and comply with orders issued. The tenant stated that over the duration of this tenancy, it has been necessary to file for dispute resolution on approximately 20 separate occasions. The tenant made a request for that the landlord be fined under the penalty sections of the Act.

The landlord testified that there is absolutely no breach of the order issued on May 25, 2005. The landlord testified that the tenant has repeatedly engaged dispute resolution services as a means of harassing the landlord with unfounded complaints because of an apparent personal vendetta against any manager that the tenant dislikes..

#### **Analysis**

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution

Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- [1] Proof that the damage or loss exists,
- [2] Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- [3] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- [4] Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and 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. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that the tenant has not succeeded in meeting the test for damages and losses to support the claim for compensation against the landlord. Although the tenant has shown that expenditures were genuinely incurred, the tenant did not establish the criteria required for element 2 of the test. The tenant failed to provide sufficient proof that the damages were caused by the landlord and in contravention of the Act. Therefore, I find that this portion of the tenant's application must be dismissed.

In regards to compensation being claimed by the tenant for the drywall repairs, I find that, unless a matter relates to emergency repairs as defined in section 33 of the Act or unless the tenant first obtains an order to allow the tenant to do the repairs and be compensated, the Act does not permit any tenant to complete repairs and then demand payment from the landlord. The expectation is that the tenant would make an application to compel the landlord to address the repair. I find that this portion of the tenant's application has no merit and that it must be dismissed.

In regards to the tenant's request for a rent reduction based on the alleged failure to comply with an order relating to the cleaning of windows, I find that there is no basis to conclude that the landlord violated a previous order issued in May 2005 and find that this portion of the tenant's application must be dismissed.

In regards to the tenant's request for an order to compel the landlord to comply with the Act, and an order that the landlord provide services or facilities required by law, I find that nothing has been introduced in this application nor during these proceedings to indicate that the landlord is in violation of any provision of the Act or in non-compliance

with any relevant law relating to services or facilities. Therefore I find that this portion of the tenant's application must be dismissed

In regards to the portion of the application that requests that a penalty be imposed on the landlord, this is not a matter that falls within my jurisdiction to determine and I direct the applicant to seek advice from the Residential Tenancy Branch on this issue.

### **Conclusion**

Given the testimony and evidence of the parties in this dispute, I find that the tenant has not sufficiently established any entitlement for monetary compensation from the landlord and has not proven that there is or has been any violation of the Act or Regulation. Accordingly, the tenant's application is hereby dismissed in its entirety without leave to reapply.

February 2009

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Date of Decision

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Dispute Resolution Officer