



# Dispute Resolution Services

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

## **DECISION AND REASONS**

**Dispute Codes:** *MNDC, RP, FF*

### **Introduction**

This hearing dealt with an application by the tenant, for a monetary order for compensation for the loss of use and enjoyment of two decks, the garage and the living room, pursuant to Sections 67 of the *Residential Tenancy Act*. The tenant also applied for an order to seek landlord's action to complete the repairs, pursuant to Section 32 and to recover the filing fee for this application pursuant to Section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

At the start of the hearing, the tenant advised me that the tenant had received a notice to end tenancy for landlord's use of property; the tenant was not disputing the notice and had plans to move out on March 31, 2009. Hence the tenant withdrew the portion of the application which sought an order for the landlord to carry out repairs.

The landlord indicated that the tenant had made a similar application in 2007 and this matter was heard at an arbitration hearing on November 09, 2007. The landlord stated that the landlord had not received the decision. Upon further discussion, the landlord advised me that the tenant had deducted \$500.00 from the rent for December 2007, which the landlord was given to understand by the tenant, was part of the decision rendered at that time. Upon viewing this decision, the landlord's copy of the decision was mailed to the tenant's address and the decision allowed the tenant to retain \$300.00 from the following month's rent. The above mentioned hearing was an application by the tenant for compensation in the amount of a 20 percent reduction in rent due to a loss of facility and use of the decks, living room and garage of the home.

### **Issues to be decided**

The tenant applied for compensation and this matter was heard on November 09, 2007. Hence all claims for compensation by the tenant that are prior to this date will not be considered.

Is the tenant entitled to a monetary order for compensation in the amount of \$21,000.00 which is the tenant's claim for loss of use since November 2006, of the key features of the home which include the decks which have an ocean view, the living room and the garage? Is the landlord entitled to the recovery of the filing fee for this application?

### **Background and Evidence**

Based on the sworn testimony of both parties the facts are as follows:

The tenancy started on March 01, 2006 on a month to month basis at a monthly rent of \$2500.00 payable in advance on the first of each month. Prior to the start of the tenancy, the tenant paid a security deposit of \$1250.00. On November 09, 2007, the tenant made an application seeking orders for repairs and compensation for loss of use of the decks, living room and garage. The landlord stated that the decision was not received by the landlord, but the repairs as discussed in the hearing were carried out. On January 26, 2009, the landlord served the tenant with a two month notice to end tenancy effective March 31, 2009.

The tenant stated that the repairs conducted by the landlord were inadequate and resulted in the tenant being deprived of enjoyment of certain features of the home. The tenant stated in written submissions that both decks were rendered "*unusable and unsafe due to the damage and the shoddy repair attempts undertaken by the landlord*" and stated that the tenant had not used the decks since November 2006 for family or social gatherings. The tenant also stated that the garage is constantly wet due to a leak from the deck above it and therefore is unusable, and the living room has a large area in the ceiling which is not painted and continues to leak. The tenant has submitted into evidence photographs (undated) that show the product used to fix the upper deck, the repairs to both decks, the living room ceiling during and after repairs and the collapsed garage ceiling. The tenant has also stated that the tenant has concerns with mould, mildew and insects associated with the failed shower enclosures which likely are causing water damage to the surrounding structures of the home.

The tenant stated that there are squirrels residing in the attic. The tenant is claiming a rent reduction of \$875.00 per month from November 2006 to the present date, for loss of enjoyment, the filing fee, the cost of the inspection report and the cost of mailing the notice of hearing to the landlord.

On October 30, 2008, the tenant hired a building inspector to inspect the residence and provide a report regarding its condition. The report stated that *“Deck surfaces are deteriorated and currently leaking. Surface material used (painted on) is inappropriate for use over living space. Complete rebuilding of deck surfaces recommended. Insulation may need to be replaced. Consult licensed building contractor for further evaluation and repairs.”* The report did not have any comments under the heading “garage” which could confirm the condition of the garage as portrayed in the photographs submitted by the tenant. The report also stated that the ceilings at various places had water stains and were sagging, damaged and patched and that there were repairs required in the washroom due to moisture in the shower walls and threshold. The tenant acknowledged that the tenant did not give a copy of this report to the landlord for further action.

The landlord stated that after the last hearing in November 2007, even though the decision was not received, the landlord carried out repairs to the indoor ceiling and the decks, as discussed during the hearing. The landlord also stated that the tenant uses the decks, as there is furniture and other items present on the decks that indicate that the decks are in use. The landlord stated that the report was done on October 30, 2009, but the tenant did not present it to the landlord and the landlord only saw it when the tenant served the landlord with the hearing package. The landlord disagreed with some of the items on the report and stated that the landlord had conducted the repairs as discussed in the last hearing and had received a deduction of \$500.00 off the rent for December 2007. The landlord stated that the tenant did not contact the landlord regarding further repairs

**Analysis**

It is important for the claimant to know that to 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 Landlord. 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.

Section 32 of the *Residential Tenancy Act* imposes responsibilities and obligations on both parties for the care of the rental unit. The tenant stated that the damage occurred from the shoddy repair work of the landlord. However, the tenant did not inform the landlord of the damage until the report was given to the landlord along with the hearing package thus denying the landlord the opportunity to repair the damage caused by what the tenant believes to be the shoddy repair work of the landlord. Hence the tenant's claim does not meet element two of the above test. By neglecting to inform the landlord of the damage, the tenant did not take steps to mitigate the damage and hence the tenant's claim does not meet element four of the above test. Therefore, I find that the tenant's claim for all the above items does not meet all the components of the above test.

Based on the sworn testimony of the both parties, I find that after the landlord carried out the repairs as ordered to, the tenant did not advise the landlord of any further repairs that were needed and also did not provide the landlord with the report which outlines the deficiencies that were noted by the inspector. The report does not state that the decks are unusable and unsafe and it is more likely than not that the tenant has had the use of the decks through the tenancy or the tenant would not have continued to rent at this location for three years.

Section 6 of the *Residential Tenancy Policy Guideline* states that in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which it was leased. Such interference might include serious examples of allowing the property to fall into disrepair so the tenant cannot safely continue to live there. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. I find that the tenant has not shown that the premises were unfit for occupancy and that the landlord allowed the property to fall into disrepair making the rental unit unsafe for occupation.

### **Conclusion**

The tenant has not proven the tenant's claim and hence the tenant's application is dismissed in its entirety. The tenant must bear the cost of filing the application.

Dated March 06, 2009.

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Dispute Resolution Officer