



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNDC, RR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of peaceful enjoyment of their suite and devalued tenancy over a 98 day period during remediation from a flood in the rental unit.

Despite being properly served with the Notice of Hearing, the landlord did not appear.

### **Request to Submit Late Evidence**

The respondent landlord asked permission to fax into evidence a statement from the landlord.

Rule 4.1 requires that , if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents and other evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the “Definitions” part of the Rules of Procedure.

In some cases the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met and if this is the case, then all of the respondent’s evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

In this instance I find that because the evidence in question had not been submitted in compliance with the Rules of Procedure and had not been served on the other party, it would not be considered in the determination of the dispute. However, the landlord was permitted to give testimonial evidence during the proceedings in response to the tenant’s claims.

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

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation under section 67 of the Act and a retroactive a rent abatement for lack of facilities and services.

The burden of proof is on the applicant tenant to prove all of the claims and requests contained in the application.

### **Background and Evidence**

The tenancy began in August 2010 with rent set at \$825.00 and a security deposit of \$413.00 was paid. The tenant testified that the unit was not cleaned before she moved in and this required three full days of labour valued at \$300.00 and assistance from 2 other people valued at \$100.00 each. The tenant testified that she was only partially compensated in the amount of \$60.00 for supplies. The tenant also testified that there was a flea infestation that was reported to the landlord but nothing was done. The tenant stated that she was forced to carry out the flea control incurring a cost of \$50.00 for which she was never reimbursed.

The landlord testified that the tenant moved in as the former tenant was moving out and an offer by the landlord to have the landlord clean was refused by the tenant. The landlord testified that the tenant was compensated \$100.00 in cash to do the cleaning. In regard to the flea issue, the landlord stated that the tenant had rebuffed the landlord's overtures to take care of the flea extermination and insisted that she had her own flea control supplies.

The tenant testified that during her tenancy she was without a working stove from August 2010 until the end of October 2010 and was seeking a rent abatement. The tenant also had a complaint that her refrigerator leaked and tended to freeze up.

The landlord testified that only the oven portion of the stove did not function and that the appliance has been replaced. The landlord stated that it would have been done earlier but the tenant did not cooperate. In regard to the refrigerator, the landlord consented to replacing this appliance as well.

The tenant testified that there were other complaints including that the landlord would not provide paint or a bathroom mirror as promised at the start of the tenancy and that the washing machine leaks. The tenant also testified that repairs were done by the tenant's son instead of by the landlord.

The landlord agreed the landlord was willing to supply the paint. However, the tenancy is ending at the end of this month, so the remaining issues have become somewhat less important to this tenancy.

### **Analysis - Monetary Compensation**

The tenant was requesting a rent abatement for the reduction of value of the tenancy given the disruption and reduced quality of the tenancy for the period in question.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, 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 has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence 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 tenant to prove a violation of the Act and a corresponding loss.

I find that section 32 of the Act requires a landlord to 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 section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or qualifies as a material term of the tenancy agreement. It is clear that there were some issues that were left unaddressed by the landlord. However, the tenant was not able to sufficiently prove

that there was a loss such that the tenancy was significantly devalued to warrant the amount of the claim.

In this instance I find that there were deficiencies in the condition of the unit under the contractual obligations of the tenancy agreement for the period in question. Given the above, I find that a rent abatement of 15% is warranted. Accordingly I find that the tenant is entitled to \$618.75 in compensation and the \$50.00 cost of this application for a total of \$668.75.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby grant a monetary order in favour of the tenant for \$668.75. This order must be served on the landlord in person or by registered mail and can be enforced through Small Claims Court if necessary.

I also order that upon vacating the rental unit by January 1, 2011, the tenant will not be required to clean the unit to a higher standard or condition than the state it was in at the start of this tenancy.

The remainder of the tenant's application is dismissed without leave.

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: December 2010.

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Dispute Resolution Officer