



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNDC

### Introduction

This was the hearing of an application by the tenant for a monetary order. The hearing was conducted by conference call. The tenant and the landlord participated in the hearing. The landlord was represented by her lawyer.

### Issues(s) to be Decided

Is the tenant entitled to a monetary order and if so, in what amount?

### Preliminary matter

The applicant objected to the participation of the respondent's lawyer as her counsel at the hearing of his application. He said that counsel for the landlord could not act for her because:

Mr. (name of Lawyer) is illegally representing and defending Ms. (name of landlord) on this claim. You cannot defend or represent two different agreements under one tenancy. Mr. (name of lawyer) can only defend and represent this residential tenancy agreement made out by him and witnessed by him. He cannot represent Ms. (name of landlord) on saying the tenant is responsible for all the repairs and maintenance to the property.

Even if the applicant is correct in his assertion that the respondent's lawyer drafted the tenancy agreement and witnessed its signing that does not constitute any impediment

to his representation of the landlord on this application. There is no merit to the applicant's objection to the participation of counsel for the respondent. I so advised the applicant at the hearing when I denied his objection.

### Background and Evidence

The rental property is a residence on an acre of land. The applicant is the former owner of the property. The respondent purchased the rental property in 2003 by court ordered sale in foreclosure proceedings. The respondent entered into a tenancy agreement with the applicant. The applicant occupied the property pursuant to the tenancy agreement until the respondent sold the property in September or October, 2008. The applicant continues to occupy the property pursuant to an agreement with the new owner.

The applicant filed an application for dispute resolution on July 23, 2010. He claimed payment of the sum of \$9,046.00 that he said he is entitled to receive from the landlord for property maintenance and house repairs that he has performed during the tenancy. Before he filed this application he made a similar claim in the provincial Small Claims Court. I was told that the Provincial Court judge dismissed the claim because jurisdiction to entertain the claim lay with the Residential Tenancy Branch.

According to the written tenancy agreement the tenancy commenced on November 1, 2003. Monthly rent was stated to be \$800.00 and the tenant paid a \$400.00 security deposit on November 1, 2003.

The landlord said that the rent was to be \$850.00 but it was reduced to \$800.00 per month and the tenant was to be responsible for the maintenance of the grounds. The tenant claimed in his written material that the landlord has, in his words been stealing money from the tenant by claiming that the base rent should be \$850.00 and suggesting that the tenant has been compensated by paying only \$800.00 per month rent. The tenant said as follows:

I have lived on (the landlord's) property for 5 years making repairs to the house and maintaining the property. (The landlord) wanted me to look after the property saying that I did a good job of the property care. The property is 1 acre of landscaped beach front property. I have never received any money or rent reduction for my work done on the property. I have paid (the landlord) \$47,000 in 5 years rent for the property. I have asked (the landlord) twice for money for lawn cutting and house repairs. Thus she always referred to an agreement that I was responsible for all property maintenance and house repairs due to rent reduction until the property was sold. This is a false and non existing agreement in order to **steal money.** (reproduced as written)

The tenant did not make any written requests for payment or submit any bills or invoices until he commenced a Small Claims action in October, 2008. He claimed for grass cutting at \$80.00 per cutting and he claimed to have performed work to the house, including the replacement of rugs and linoleum, replacement of a deck railing and the repair of sewer and water pipes. The tenant made no requests to the landlord to have this work done and did not request permission to do the work.

The landlord testified that she was not involved with the property as landlord. She hired a professional property management company to look after the property on her behalf and left the property manager to do his job. The landlord produced copies of the property manager's ledger that showed expenditures for maintenance as well as rental payments received. She submitted that the expenditures for maintenance showed that the tenant was not responsible for repairs and maintenance, but only for grass cutting and yard maintenance. The tenant disputed this statement; he alleged that all the maintenance amounts had been expended on a manufactured home located on the property and rented under a separated tenancy agreement.

#### Analysis and conclusion

Contrary to the tenant's testimony that his tenancy agreement with the landlord made him responsible for all property maintenance and house repairs, the tenancy agreement as written said that the landlord:

must provide and maintain the residential premises and residential property in a reasonable state of decoration and repair, making the residential premises and residential property suitable for occupation by a reasonable tenant.

This passage paraphrases the provisions of section 32 (1) of the *Residential Tenancy Act* which requires a landlord to provide and maintain the residential property that complies with 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.

The landlord denied that there was any agreement making the tenant responsible for repairs to the rental unit. Her testimony accords with the terms of the written tenancy agreement and I accept her evidence on this point in preference to that of the tenant.

There is no evidence that the tenant ever made a request for repairs, either to the landlord or to her property manager. The repairs or improvements that he may have made were done without the landlord's knowledge or approval and there was no agreement that the tenant would be compensated for repairs or improvements performed by him. With respect to the tenant's claim for compensation for grass cutting and yard maintenance, the Residential Tenancy Policy Guideline #1, *Landlord & Tenant – Responsibility for Residential Premises* provides:

#### **PROPERTY MAINTENANCE**

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

The residential property in question is a single family dwelling and, applying the policy guideline I find that the tenant was responsible for yard maintenance, including grass cutting.

I find that the tenant is not entitled to compensation for repairs or improvements that he performed without any agreement as to compensation and without the landlord's knowledge or consent. I find that he is not entitled to compensation for yard maintenance or grass cutting. The tenant's claim for a monetary order is dismissed without leave to reapply.

Dated: December 14, 2010.

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