



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for a monetary order in the amount of \$2400.00 as compensation for damage or loss under the Act, regulation or tenancy agreement.

### Preliminary matter

After reading the application I made a finding that a portion of this application has been dealt with in a previous dispute resolution hearing and was dismissed and therefore I am unable to hear the matter again.

The application for compensation for disturbances caused by other occupants in the building was dismissed by the previous dispute resolution officer pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure which reads as follows.

### ***2.3 Dismissing unrelated disputes in a single application***

*If, in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.*

In this case the previous dispute resolution officer dismissed the claim and did not state that it was dismissed with leave to reapply.

The dispute resolution officer did state that the tenant may make a further claim for loss of quiet enjoyment if there are continuing disturbances; however the claim for compensation of \$1200.00 on this application relates to the same period of time dealt with in the previous dispute resolution hearing, and not to any continuing disturbances.

In the tenants written statement she states that they had to endure these disturbances from July 2010 through the end of December 2010, and therefore since the previous decision was issued on January 14, 2011, this application cannot possibly relate to continuing disturbances.

I therefore will only be dealing with the claim for loss of enjoyment due to deficiencies in the rental unit.

### **Background and Evidence**

The applicant/tenant testified that:

- When she moved into the rental unit she and the previous manager noted numerous deficiencies in the rental unit.
- The deficiencies were not however listed on the move in inspection report, because the previous manager stated that they would be repaired.
- These deficiencies were never repaired and the previous manager was subsequently let go.

- The present management has claimed that these deficiencies/damages were caused by her, since they are not listed on the move in inspection report, and even informed her that she would be held responsible for the estimated \$1000.00 cost of repairing the damages.
- The previous resident manager has signed a statement that lists all the deficiencies that existed at the beginning of the tenancy, which were not listed on the move in inspection report.
- She therefore believes that the landlord should be responsible for repairing these deficiencies, and she is asking for \$80.00 per month compensation for their failure to make these repairs and for the stress caused by them claiming she is responsible for the cost of the repairs.

Witness for the tenant testified that:

- She is the previous manager and was the manager in place when the applicant moved into the rental unit.
- The deficiencies that the tenant is claiming, did exist at the beginning of the tenancy however they were not put on the move in inspection report, because they were going to be repaired right away.
- The deficiencies were not repaired right away however due to a problem with a bedbug infestation, that took the landlords full attention, and resulted in needed repairs not being dealt with.
- She subsequently left the employment of the landlords, however at the request of the tenant she did sign the deficiency list.
- None of the deficiencies were major and certainly did not require immediately repair, however she had informed the tenant that these deficiencies were not her responsibility.

The respondent/landlords testified that:

- When the tenant moved in she signed the move in inspection report that does not show any of the deficiencies that she is now claiming.
- Prior to the termination of her employment, the previous building manager made no mention of the deficiencies that she now claims existed in the rental unit.
- Therefore since the move in inspection report makes no mention of the deficiencies, they had concluded that these deficiencies/damages must've been caused by the applicant.
- They did send her a letter stating that the deficiencies were not on the move in inspection report and that she would be held liable for the cost of repairing any damages not listed on the move in inspection report.
- The tenant has requested a copy of the previous tenants move out inspection report, however as yet they have not been able to retrieve that from head office, and repairs would most likely have been done between tenancies anyway.
- Further the majority the items claimed on the deficiency list are minor in nature and do not require any repair at this time other than the refrigerator which now appears to be leaking and will be replaced at no cost to the tenant.
- They therefore do not feel that they should be held liable for any repairs nor do they believe that the tenants claim for compensation is justified.

### Analysis

Based on the evidence presented is my finding that this tenant is caught in a dispute between the landlords and their previous manager, and therefore she cannot be held liable for the cost of any repairs needed due to deficiencies in the rental unit.

The previous manager has given direct testimony that all the deficiencies on the tenant's deficiency list pre-existed her tenancy and although the landlord and the present manager have argued that the tenant should be held liable for the deficiencies

because they are not listed on the move in inspection report, it is my decision that she is not liable.

It is the landlord's responsibility to ensure that the move in inspection report is properly completed, and since the previous building manager has testified that it was not filled in properly, the applicant is not bound by that report.

That being said, after viewing the deficiency list and hearing the testimony of the landlords, the tenant, and the previous manager, is my finding that the deficiencies in this unit are mostly cosmetic and do not interfere in any great way with the use and enjoyment of the rental unit, and therefore I will only allow a small portion of the amount claimed for loss of use and enjoyment.

#### Conclusion

I will not issue a repair order, however I will allow a rent reduction of \$20.00 per month for loss of use of enjoyment. I allow this rent reduction retroactive to October of 2010, the month following the date at which the tenant supplied the landlords with the deficiency list.

The rent for this rental unit will therefore now be \$780.00 per month, and I have issued a monetary order in the amount of \$180.00 to cover the months of October 2010 through June 2011. The applicant may therefore deduct the \$180.00 from future rent payable to the landlords.

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: June 20, 2011.

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Residential Tenancy Branch