



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RR, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order; an order to have the landlord comply with the *Residential Tenancy Act* (Act), regulation or tenancy agreement; and an order to have the landlord reduce rent for repairs, services or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the tenant; two agents for the landlord and two witnesses for the landlord.

At the outset of the hearing, the tenant confirmed that he will have vacated the rental unit and returned possession of the rental unit back to the landlord by June 30, 2011.

As such, there is no longer a need to seek an order for the landlord to comply with the Act, regulation or tenancy agreement or to reduce future rent for repairs, services or facilities agreed upon but not provided. With the tenant's consent, I amend the application to exclude these matters.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 67, and 72 of the *Residential Tenancy Act* (Act).

### Background and Evidence

While the tenant had a previous tenancy in the residential property, this tenancy began on February 1, 2011 as a 6 month fixed term tenancy for a monthly rent of \$1,515.00 due on the 1<sup>st</sup> of each month and a security deposit of \$757.50 was paid.

The tenant contends that after he moved in there were a number of problems with the rental unit. The most serious issue to the tenant was the constant smell of smoke in the rental unit that worsened from 11:00 p.m. each evening until 3:00 or 4:00 a.m. each morning.

The tenant asserts there were additional problems with the rental unit, including inoperable locks on windows; a missing bar from the balcony railing; leaking under the counter; fan noise for both the bathroom and range hood fans.

The tenant further testified that despite repeated complaints to the landlord, the landlord failed to provide sufficient remedy within a reasonable time frame. In particular he was concerned for the health and safety of his family if the issues of smoke and balcony/window security were not addressed. There is a three year old child in the rental unit.

The landlord provided evidence and testimony through its agents and witnesses that the landlord did respond to the tenant's complaints and tried to work with the tenant's restrictions around access to the rental unit despite never having found any smoke smell or visible evidence of smoke in the rental unit.

Despite repeated efforts to try to address the concerns, the landlord contends that they could tell the tenant was still unhappy and that nothing the landlord did seemed to resolve the issues for the tenant and so they offered the tenant two additional rental units in the same residential property. The tenant declined these offers.

Ultimately the landlord offered the tenant the ability to end the fixed term tenancy early and without penalty, which the tenant accepted resulting in the tenancy ending on June 30, 2011.

The tenant testified that he was seeking compensation in the amount of \$8075.00 representing the full amount of rent paid for the period from February 1, 2011 to June 30, 2011 because of the impacts to his family's health, security and ability to work. The tenant provided documentary or corroborating evidence of any impacts on any family member's health or his ability to work.

The tenant disputes most of the content of the landlord's documentary evidence and testimonial evidence, including that of the witnesses. For example, the tenant contends that the onsite manager never entered his rental unit to check the smell, despite the manager's testimony that she was there twice with the tenant. The tenant provided no documentary or corroborating evidence to confirm his version of events.

The tenant also asserts that he never turned anyone away when they came to work on the unit as the landlord has indicated, yet he also states that on one occasion he was about to have a shower and then leave the rental unit so he asked them to come at a different time.

### Analysis

To be successful in a claim for damage or loss the applicant must provide sufficient evidence to substantiate the following 4 points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation, or tenancy agreement;
3. The value of the loss; and
4. The steps taken to mitigate the loss, if any.

In relation to the testimony and evidence provided in this hearing, I find the tenant's testimony to be filled with too many inconsistencies and with insufficient supporting evidence to be considered reliable in this claim.

I accept that the landlord took repeated action, within a reasonable timeframe, to try to appease the tenant's concerns despite never establishing that there was a smoke problem in the rental unit.

I find the landlord took exceptional steps to try and accommodate the tenant when they found the issues seemed to be unresolved for the tenant up to and including the offers of new rental units and ending the tenancy without penalty.

I further find the tenant has failed to establish that he has suffered any loss or damage. In failing to establish a loss or damage suffered, the tenant has failed to establish that a loss or damage results from any violation of the *Act*, regulation or tenancy agreement.

I find the tenant failed to provide any evidence to support the establishment of the value of any loss and in failing to accept the landlord's offer to move to a new rental unit the tenant failed to take all reasonable steps to mitigate any loss.

From the above, I find the tenant has failed to provide sufficient evidence to establish any of the 4 points noted above that are required to be successful in a claim for compensation for loss or damage.

### Conclusion

For the reasons above, I dismiss the tenant's application in its entirety.

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 30, 2011.

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Residential Tenancy Branch