



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ERP, MNDC

### Introduction

This hearing dealt with the tenant's Application for a monetary order for money owed or compensation under the Residential Tenancy Act (the "Act") or tenancy agreement and for an order requiring the landlord to make emergency repairs.

The tenant and the landlord's agents appeared, were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenant to a monetary order?

Has the tenant established that the landlord be required to make emergency repairs?

### Background and Evidence

I heard testimony that this tenancy began on or about March 1, 2011, for a one month, fixed term tenancy, which was renewed for an additional month, and the fixed term move out date was April 30, 2011.

The monthly rent was \$575.00 and the tenant paid a security deposit of \$287.50 at the beginning of the tenancy.

The landlords applied for dispute resolution and received an Order of Possession against the tenant, in July 2011, due to the expiration of the fixed term; however the

tenant has not vacated the rental unit and the landlords have been unable to enforce the Order of Possession due to the tenant's application for review.

The tenant's monetary claim of \$500.00 includes the landlord's alleged destruction of his Christmas ornaments and personal possessions. The tenant stated that the landlords have smashed his windows and boarded up his rental unit, causing damage to his rental unit.

The tenant's request for emergency repairs stem from the missing windows and door.

The tenant submitted no evidence.

The landlords submitted that they had to secure the premises as the tenant lost his key, and rather than seek a new key from the landlord, the tenant went up the fire escape, broke through the windows and kicked in the door.

The tenant has caused over \$500.00 in damages due to the destruction of his premises.

Despite having reached the end of his fixed term tenancy, on April 30, 2011, and having an Order of Possession issued against him, the tenant remains in the rental unit.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenant to prove damage or loss.

In the circumstances before me, the tenant supplied deficient evidence which I find does not meet the burden of proof necessary for a monetary claim.

Rather, the landlords provided credible testimony that the damage to the rental unit was caused by the tenant and that it was necessary for the landlords to secure the premises due to the tenant's actions. I prefer the testimony of the landlords over the tenant.

Due to the above, I find the tenant has provided no evidence or credible testimony to substantiate the merits of his claim.

Conclusion

**I therefore dismiss the tenant's application, in its entirety, without leave to reapply.**

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: July 27, 2011.

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Residential Tenancy Branch