



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, OLC, ERP, RP, PSF, FF, O

### Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the cost of emergency repairs; to order the landlord to comply with the Act, regulation or tenancy agreement; to make emergency repairs; to make repairs to the unit; to provide services or facilities required by law; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?

Should orders be issued to the landlord to make repairs, to provide services, or concerning any of the issues addressed by the tenant?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a bachelor suite in a multi-unit complex. Pursuant to a written agreement, the tenancy started on September 15<sup>th</sup>, 2011. The rent is \$880.00 per month and the tenant paid a security deposit of \$440.00.

The tenant testified that the unit was not completely cleaned at the start of the tenancy. He stated that with the landlord's approval, he rented an industrial carpet cleaner that became clogged with cat hair. He said that he experienced problems with the electrical system, and that while out of town late November or early December 2011 his power went out and the food rotted in his fridge. He said that even after cleaning the fridge he cannot get rid of the smell. He said that his electrical appliances acted strangely and eventually needed replacing.

The tenant stated that the air conditioning unit was precariously mounted within the window frame and that while trying to secure it the window cracked. The tenant does not feel that he should be responsible for the cost of replacing the window.

The tenant stated that on December 7, 2011, he wrote the landlord a letter with his concerns. He stated that the landlord came to inspect the unit and that she said that there was nothing wrong and made no repairs.

The tenant addressed other issues with the heat and an alleged leak in the bathroom; however these issues were not part of his claim for compensation.

The tenant's witness testified that she saw the unit at the start of the tenancy and that it was not properly cleaned. She also stated that the fridge continues to emit a foul smell which makes it unusable. She also stated that the air conditioning was not secured properly, that there was a gap between the unit and the frame covered with deteriorating pieces of duct tape.

In his documentary evidence, the tenant provided nine photographs of the unit, showing that; a piece of carpet was cut away to bare concrete; a cooler being used instead of the fridge; a sliding door off its track; a shower head with a small gap to the ceramic wall; a

bathroom cabinet cover pulled apart; a cover to the shower ceiling; a cracked window; a gap to the air conditioning window frame; a replacement TV and computer.

The tenant submitted a written document in which he requested to end the tenancy without having to give proper notice and a monetary claim as follows:

- Remove carpet and carpet cleaning:	\$ 150.00
- 2 days missed work:	\$ 256.00
- Loss of food:	\$ 300.00
- New TV and surge protector:	\$ 950.00
- New computer:	\$1080.00
- Total:	\$2736.00

At the hearing the tenant also submitted that he wanted compensation of a free month's rent, and a rent reduction of \$200.00.

The landlord testified that the tenant's evidence is all false. She referred to a copy of the condition inspection report wherein the tenant signed that the unit was clean. She stated that the unit was empty for 2 weeks and that it had been professionally cleaned, including the carpets, and that she did not notice any bad smell. She confirmed that the tenant addressed a problem with the carpet, and that she agreed only to have a one foot portion cut out because it was behind the television. She stated that she did not hear of the problem or any of the other problems until she received the tenant's December 7<sup>th</sup>, 2011 letter. She stated however that the letter did not address the air conditioning unit, and that the tenant never informed her verbally or in writing on this issue.

Concerning the electrical, the landlord stated that the building does not have an electrical problem. She said that she responded to the tenant's letter and attended the unit. She said that she informed the tenant that there had been a major power outage, and that other buildings had been impacted. She stated that the tenant has 5 TV's and

2 or 3 computers, which are too many appliances for the unit. She said that she has been the landlord there for 5 years and that there has been no reports of electrical problems.

Concerning the bathroom leak, she stated that she attended the unit and that the tenant stated that it was not leaking at that time.

### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the tenant to prove his claim against the landlord.

The Act describes an emergency repair as one that is urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and made for the purpose of attending to repairs such as major water leaks, damaged or blocked plumbing fixtures. The problems reported by the tenant cannot be characterized as emergency repairs.

Based on the parties' testimony and the evidence before me, it cannot be disputed that the landlord did respond to the tenant's concerns. Although the tenant expected a different outcome, it cannot be argued that the landlord was negligent to address the tenant's concerns. The tenant has not demonstrated to the extent necessary that he is entitled to compensation for the landlord's failure to make repairs or comply with the Act. There was a mutual agreement concerning a portion of the carpet; the tenant has not provided material evidence to prove that his appliances malfunctioned and

replacement were a direct result of an electrical problem or from the landlord's failure to make specific repairs. If a power outage occurs while the tenant is away, it is at no fault of the landlord; nor can I find the landlord responsible for surges when hydro restores power. There was no evidence that the tenant properly informed the landlord of a problem with the air conditioning unit and therefore I do not consider that the landlord violated the Act.

The condition inspection report shows that the unit was in a clean condition, and that the carpets were professionally cleaned. If the tenant disagreed with the report, he ought not to have signed it, and his concerns should have been addressed and documented on the report. I find no basis on which to consider that the tenant ought to be compensated for missing work to clean carpets.

As stated above, none of the issues addressed can be characterized as emergency repairs; I find no merit on the tenant's request to end the tenancy outside of the statutory requirements of the Act, or to consider monetary compensation that was not identified in his application for dispute resolution.

Since I do not find that the landlord is responsible for the tenant's misfortunes, I find no reasons to issue the landlord orders with respect to this application as the tenant continues to have full use of the unit.

### Conclusion

The tenant's application is dismissed.

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: February 22, 2012.

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Residential Tenancy Branch