



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, OLC, RP, FF, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to make repairs and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and three agents for the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to make repairs; to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Act*.

### Background and Evidence

The parties agreed the tenancy began on June 1, 2011 as a 1 year fixed term tenancy agreement for monthly rent of \$779.00 due on the 1<sup>st</sup> of each month with a security deposit of \$299.00 paid on June 1, 2011.

The tenant submits that there is a smell coming from the garbage chute room across the hall from his rental unit and the landlord has failed to correct this problem. Two of the landlord's agents testified that they have investigated the smell but have the smell is minor and only if they are in the garbage chute room.

The tenant asserts that he has had members of the staff confirm to him that they can smell the offensive odour, but that they do not follow up on his complaints. He also states that has had headaches as result of this problem.

The landlord's agents also testified that they have occasional complaints from other tenants in the 266 unit property that are generally related to blockages in the chute itself and that when they receive these complaints they deal with them immediately 24 hours per day because of the potential for bigger problems if they don't deal with them.

The tenant insists the problem is the ventilation system that causes the aroma to be "pushed" into his rental unit because there is no seal on the garbage chute room door.

The parties do agree the landlord has put an air freshener in the garbage chute room and that the landlord has offered two different rental units but that the tenant has turned both of them down.

The parties agree the tenant has lived in two other units in the building, one on the 5<sup>th</sup> floor and one on the 12<sup>th</sup>. The tenant testified that he also had odour problems on each of those floors and in fact moved from the 5<sup>th</sup> floor to the 12<sup>th</sup> as a result of odours on the 5<sup>th</sup>. The tenant testified that at the time he wasn't sure what the smell was but that now he is sure it was the garbage chute rooms on each of those floors.

The tenant also identifies that there are fans running on the roof that interfere with his ability to sleep. The landlord's agent testified the belts were changed on these fans recently as part of their regular maintenance and both parties agree this problem has lessened.

The tenant seeks compensation in the amount of \$4,000.00 that he indicates represent ½ the total rent the tenant has paid from the start of the tenancy.

### Analysis

Section 32 of the *Act* requires a landlord provides and maintains a rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find, in regard to the odour issue, the tenant has provided no evidence or testimony that shows the landlord has failed in their obligations to make the unit suitable for occupation. In addition, from the landlord's testimony that this tenant is the only person who has complained about a smell problem out of 266 units and based on the balance of probabilities the landlord has taken all reasonable steps to deal with the tenant's complaint.

Further, I find the tenant has failed to establish that the landlord failed to deal with the noise complaint regarding repairs to the fans on the roof of the building, as per the tenant's testimony the repairs have been made.

I find the landlord has taken steps over and above that which are necessary by offering the tenant not just one but two alternate units to move to alleviate these problems. For these reasons, I find the landlord has complied with the *Act* and there are no required repairs to be made.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

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

While I accept a damage or loss, in relation to a tenancy, may include the loss of quiet enjoyment of the rental unit, I find the tenant has failed to establish that he has suffered a loss in the case before me.

As I have also found the landlord has complied with the *Act* in relation to their obligations to provide and maintain a rental unit in a manner that makes it suitable for occupation, I find the tenant has failed to establish he has suffered a loss resulting from a violation of the *Act*.

And finally, I find that despite the above, if the tenant had established a damage or loss suffered as result of a violation of the *Act* on the part of the landlord, the tenant has failed to mitigate any losses by refusing to accept alternate rental units in the complex.

#### Conclusion

For all of 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: March 23, 2012.

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Residential Tenancy Branch