



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC OLC RP

### Preliminary Issues

During the teleconference hearing I clarified with the Landlord's that they operate part of this business through their Incorporated company and they both conduct business as a Landlord, as defined in section 1 of the *Residential Tenancy Act*, (the Act). Accordingly I amended the application to include the company name as well as each Landlord's name, in accordance with section 64 (3)(c) of the Act which stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

I identified at the outset of the hearing that only five pages of evidence was received via fax from the Landlords and their fax cover page indicated there were fifteen pages. I advised the Landlords we would be proceeding with today's teleconference hearing and they were at liberty to provide oral testimony pertaining to the ten pages of evidence which was not before me.

The Tenant confirmed that as of April 2, 2012 the repairs to the shower have been completed and therefore she was withdrawing her request for an Order to have the Landlords make repairs to the unit, site or property.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenant agreement, and for an Order to have the Landlords comply with the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords breached the Residential Tenancy Act, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain monetary compensation as a result of that breach, pursuant to section 67 of the Act?

Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on March 1, 2012 and switches to a month to month tenancy after one year. Rent is payable on the first of each month in the amount of \$1,195.00 and on February 1, 2012 the Tenant paid \$597.50 as the security deposit.

The Tenant affirmed that after she arrived at the unit and began moving her possessions into the unit the Landlord attended with a completed condition inspection report form and requested that she sign it. The Landlord told her the carpets had been cleaned and that he had sprayed the oven and would return in a few hours to finish cleaning the oven. The Tenant stated that she was under time constraints to empty and return the moving truck and she was not prepared to take the time to deal with the form so she took the Landlord at his word that the carpets had been cleaned and he would return to finish cleaning the oven; however she later found out that was not the case. She stated the carpets were very dirty, so much so that when she vacuumed the small bedroom it filled her vacuum with debris. Also, the Landlord never returned to clean the oven so she had to finish cleaning it and the rest of the apartment.

The Tenant noted that she was seeking compensation for having to wait until April 2, 2012 to have the shower taps repaired as she was required to pay for the electricity costs to heat the water that was going down the drain from the spout and not the shower.

The Landlord, WBM, affirmed that he attended the unit with the completed inspection form which was completed after the previous tenants vacated the day before. He acknowledges that he took the previous tenant's word that they cleaned the carpets and that he did not check them to determine if they were cleaned. He also acknowledges that he informed the Tenant about the oven and that he was intending to return the next morning to finish cleaning it but that he was busy with month end business and forgot to return to clean it. He argued that the Tenant did not contact him to voice her concerns before she completed the work so he was not given an opportunity to rectify the situation for her. He stated that after he received the Tenant's March 10, 2012 letter he

offered to have the carpets cleaned but that she refused his offer. He confirmed the shower has since been repaired, after many attempts by himself and his plumber and at a cost in excess of \$700.00. He does not believe the Tenant suffered that great of a loss as the Landlords pay for the water usage.

The Tenant stated that only a few days after moving in and cleaning the unit she was told by WBM that the windows in her unit would be replaced the next day. She advised that she was not aware of these renovations and it was stressful to have to clean the unit all over again. She advised the contractors attended the unit and were working outside from about 8:00 a.m. and then the Landlord attended the unit and they came inside the unit and removed the windows. She was concerned that they did not put down drop sheets and cover all of her furniture until after she voiced her concerns and began to cover things up. She is seeking compensation for loss of her privacy, peace and space during the day they installed the windows and for having to clean the unit again.

The Landlord, WBM, stated that he told every prospective tenant who view the rental unit about the window replacement project. He recalls discussing the window replacement with the Tenant on three occasions, twice during the week the work was performed. The work was performed on March 7, 2012. WBM read into evidence a letter that had been written by the window installers which indicates they did cover the floor with mats, moved the Tenant's possessions away from the work area, cleaned up after themselves, sealed the units, replaced the blinds, and returned the Tenant's possessions to their approximate locations, and left the unit as clean as possible upon completion of the work. WBM referenced a letter from a neighbouring tenant who indicated how professional and clean the window replacement crew were.

The Tenant advised she is also seeking compensation for loss of her privacy as the Landlord appears at her unit without prior notice and knocks and expects to enter or perform repairs. He has appeared at her unit over ten times in the first month of the tenancy. She would prefer the Landlord call her to arrange a time that works best for both of them and requested that he not just appear at her door and knock expecting to speak to her.

The Landlord, WBM acknowledged that it is his normal practice to attend the unit without prior notice, knock and request entry. He stated that he is of the opinion that because they own the building he can appear and knock and speak to the Tenant in person and arrange another time if the Tenant is busy. He alleges that he did not have the Tenant's phone number initially and that she provided it to him since moving in. He

does not like text messages and prefers to notify his tenants of required entries in person.

The Tenant stated the Landlord has always had her number and when she changed it she sent it to him via text right away. She stated she has two children and she does not feel comfortable opening the door when someone attends and knocks unexpectedly. In closing she argued she did not know about the window replacement project until late the evening before when the Landlord appeared at the unit without prior notice and also she was not provided any information in writing before the project.

WBM confirmed that no information about the window project was provided to the Tenant in writing and he did attend the unit the evening before to remind the Tenant they would be there early the next morning. He attended the unit first thing in the morning to gain entry into the unit with the contractors, then he left and returned mid day to see how far along they were. When he returned the next day the contractors were working on another unit on the other side of the building. He did not have any other communication with the Tenant until he received her March 10, 2012 letter and then her dispute resolution papers. In response to the Tenant's list of claims he stated that for the cleaning she never called to advise him of her concerns prior to her cleaning the unit; the window replacement took only six or seven hours at most; she never contacted the Landlord to inform him that there was cleaning to do after the windows were replaced; her claim for loss of use of the shower and electricity is excessive as it was never out of use and is now repaired; and he gave her three verbal notices about the window replacement so she was informed of the loss of use and privacy in advance.

The Landlord, RM, went through the documents that were missing from their evidence which included: the Tenant's March 10, 2012 two page letter; two page condition inspection report that indicates all items are satisfactory with the exception of the oven that was to be cleaned and both parties signed it; three pages pertaining to invoices for the new windows; the letter from the window installer which was read into testimony; and two pages of pictures displaying the shower pieces and diverter; and a separate fax that was sent with the letter from the neighbouring tenants as discussed previously.

### Analysis

I have carefully considered the aforementioned, and the documentary evidence that was received prior to the teleconference hearing which included, among other things, copies of the following: The Tenant's March 10, 2012 letter, the Landlords' March 23, 2012 e-mail response, the Tenant's Appendix A, and the Landlords' April 5, 2012 letter to the Residential Tenancy Branch; and the detailed list of the claim as follows:

\$160 Cleaning apartment before unpacking  
\$ 40 Loss of use of apartment during reno  
\$100 Cleaning apartment after reno  
\$200 Loss of use of shower & electricity  
\$200 Loss of peace and privacy

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

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

In this case the evidence supports the Tenant's claim that the oven was not cleaned at the onset of the tenancy and it was left with oven cleaner sprayed inside. Although the Landlord stated he would return and finish cleaning the oven he did not. Therefore the Landlord failed to comply with section 32 of the *Act* as the oven was not suitable for use until after the Tenant suffered a loss of her time to complete the cleaning and removal of the oven cleaner. Accordingly I award the Tenant **\$25.00** for oven cleaning.

I accept the Tenant's statement that the carpets were not cleaned at the onset of the tenancy however there is evidence to support the Tenant did not immediately inform the Landlord of her concerns and when the Landlord offered to have the carpets cleaned at a later date the Tenant declined the offer. Therefore I find the Tenant did not do whatever was reasonable to minimize the loss, as required under section 7 of the *Act*, and I hereby dismiss the remainder of her claim for cleaning at the outset of the tenancy.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance;

exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlords to make the rental unit suitable for occupation which warrants that the Landlords keep the premises in good repair. For example, failure of the Landlords to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

I accept the Landlord's evidence and testimony that they informed the Tenant at least three times verbally about the window replacement project and that they contacted her the evening prior to commencement of the work to ensure she was aware they would be attending the unit early the next morning.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

From the evidence, I accept that the project crew required access to the Tenant's rental unit for a period of approximately seven hours; that they moved the Tenant's possessions with care; provided mats for the floor and covered the Tenant's furniture; and cleaned up after their work was completed. I am satisfied that the project crew did what was reasonable in caring for the Tenant's possessions and for cleaning up at completion of the project. Accordingly I find there to be insufficient evidence to prove the Tenant was faced with having to clean up after the project crew and therefore I dismiss her claim for cleaning after the reno.

While I accept the Landlord's assertion that the Tenant had an obligation to inform the Landlord of any concerns with regards to clean up required after the project was completed; I find it undeniable that the tenant suffered a loss of quiet enjoyment during the project, and therefore a subsequent loss in the value of the tenancy for the seven hour period the window project took place. As a result, I find the Tenant is entitled to compensation for the loss of quiet enjoyment during the window project in the amount of **\$40.00.**

The evidence supports the Tenant informed the Landlord of her concerns with the manner in which the shower operated and after several attempts by the Landlord and his plumber the issue was rectified as of April 2, 2012. Upon review of the evidence I find there is insufficient evidence to prove the Tenant was ever without the use of the shower or that she suffered an increased electricity bill as a result of the plumbing issue. Accordingly I dismiss her claim of \$200.00 for loss of use of shower and increased electricity costs.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the *Act* states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless : (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry or (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:(i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

The evidence supports the Landlord has a pattern of attending the rental unit and knocks to seek entry into the rental unit without providing advance notice of his attendance. I accept the Tenant's assertion that her family's quiet enjoyment is disrupted by the Landlord attending the rental unit in this manner which has occurred over ten times during the past six weeks, since the onset of her tenancy. Accordingly I award the Tenant **\$200.00** for loss of quiet enjoyment.

I find the Tenant's request that the Landlord call her in advance to make arrangements to attend the rental unit at time that is convenient for both parties to be reasonable and compliant with section 29 of the *Act*, as noted above. Accordingly I hereby order the Landlord to comply with the *Act* and contact the Tenant to seek permission to attend the unit at a time that is suitable for both parties.

The Tenant has primarily been successful with her application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY ORDER the Landlord to comply with the Act.

The Tenant is hereby award monetary compensation in the amount of **\$315.00** (\$25.00 + \$40.00 + \$200.00 + \$50.00). The Tenant may deduct this one time amount of **\$315.00** from her next rent payment as full compensation of the monetary award.

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: April 17, 2012.

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Residential Tenancy Branch