



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, ERP, FF, O

### 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 to an order to have the landlord make emergency repairs.

The hearing was conducted via teleconference and was attended by the tenant, her witness, the landlord and his legal counsel. The tenant had arranged for another witness, who was available for testimony but during the hearing the tenant decided not to call upon the second witness.

### 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; for an order to have the landlord comply and to make emergency repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 44, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement for a 7 month and 1 day fixed term tenancy that began on September 1, 2012 and converted to a month to month tenancy on April 2, 2012 for a monthly rent of \$2,700.00 due on the 1<sup>st</sup> of each month.

The tenant testified that she is primarily concerned about three repairs and these include replacing door and patio door locks; water leaks in the ceiling and carpenter ants.

The tenant testified she has asked for the landlord to change the locks on the doors and patio doors since the beginning of the tenancy and that the landlord has not changed any. The tenant submits that none of the patio doors are secure and the locks will disengage if the doors are rattled sharply. The tenant also submits that the locks had not been changed after the previous tenants vacated the rental unit and she did not feel secure.

The tenant has submitted copies of email correspondence confirming she requested lock changes as early as September 22, 2011. The landlord testified he is more than willing to fix the locks.

The tenant testified she had identified to the landlord in October 2011 that the ceiling was leaking and that the landlord did come by to look at it but it was raining at the time and nothing else was done. The landlord testified that he had recently had the roof repaired and that if there is still leaking around the fireplace he will have it looked at again.

The tenant submitted an email dated April 2, 2012 in which, among other issues, the tenant advised the landlord there was a carpenter ant infestation. The landlord testified he will be investigating this issue.

The tenant testified that on February 14, 2012 the landlord came to the rental unit to complete an inspection of the property. During that meeting the landlord indicated to the tenant that she was going to have to move out because the landlord wanted a family member to move into the unit and he asked the tenant to sign a mutual agreement to end tenancy to end the tenancy on April 14, 2012.

The tenant also testified that when she wanted a day to think about signing the mutual agreement to end the tenancy the landlord became upset and said that he would be back the next day with an eviction notice. The tenant testified that she heard nothing else from the landlord until 10 days later when he informed her that he would not be ending the tenancy and she could continue to live in the unit.

The tenant testified further that as a result of this discussion on February 14, 2012 she set about to find a new place to move to and before the landlord contacted her about not having to move she secured new accommodation and will be vacating the dispute address at the end of May 2012.

The tenant seeks the following compensation:

1. \$2,700.00 – the equivalent of 1 month's rent for failure to make the repairs requested and for the uncertainty of being given an eviction notice and then having it rescinded; and
2. \$6,400.00 – for moving costs – in support of this amount the tenant has submitted to estimates from local movers in the amounts of \$5,626.60 (mover packs) and 3,463.00 (tenant must pack).

### Analysis

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.

Section 33 of the *Act* identifies emergency repairs as repairs that are urgent; necessary for the health or safety of anyone or for the preservation or use of residential property and made for the purpose of repairing major leaks in pipes or the roof; the primary heating system; or damaged or defective locks that give access to a rental.

From the testimony provided I note that need for the landlord to deal with carpenter ants does not fall under the Emergency Repairs legislation it does fall under the landlord's obligation to maintain a rental property and since this is a recent issue identified by the tenant I find it is premature for me to make an order in regard to the carpet an infestation. Further and in relation to the tenant's Application to repair the roof and the locks and as the tenant has identified that she will be vacating the rental property by May 31, 2012, I find the landlord is not required to make these repairs as a result of this tenancy, at this time.

I accept from the documentary and testimonial evidence provided that the tenant identified the problem of the roof and the locks to the landlord early into the tenancy and the landlord had a responsibility to investigate and repair these items. I find the tenant has suffered a loss in the value of the tenancy as a result of the landlord's inaction and I find it reasonable that the value of that loss is, over the course of the entire tenancy equivalent to that of one month's rent.

However, Section 33(3) states that a tenant may have emergency repairs made when all of the following conditions are met:

1. Emergency repairs are needed;
2. The tenant has made at least 2 attempts to telephone, the person identified by the landlord as the person to contact for emergency repairs;
3. Following those attempts, the tenant has given the landlord a reasonable time to make the repairs.

As the tenant has provided no evidence that she initiated any emergency repairs as allowed under Section 33(3) or filed an Application for Dispute Resolution to seek an order to have the landlord make the emergency repairs I find the tenant has failed to establish that the repairs were of sufficient urgency that they would have been required under Section 33. As such, I find the tenant has failed to take any or all reasonable steps to mitigate this loss.

Section 44 of the *Act* stipulates that a tenancy ends if a landlord issues a notice to end the tenancy for unpaid rent (Section 46); for cause (Section 47); for end of employment (Section 48) or for landlord's use of property (Section 49). In each of those cases the

notices issued must comply with the requirements set out in Section 52 including that they must be in writing.

As an alternative to issuing a notice to end tenancy Section 44 also allows for a tenancy to end if the landlord and tenant agree in writing to end the tenancy. From the tenant's testimony I accept the parties did not enter into an agreement to mutually end the tenancy.

Further from the tenant's testimony I find the landlord did not serve the tenant with any written notice to end the tenancy on February 14, 2012 or at any time until the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on April 2, 2012 which was later nullified when the tenant paid the rent in full. As such, I find the landlord did not provide the tenant with a notice to end the tenancy in accordance with the *Act*.

In addition, from the tenant's testimony that she sought and secured rental accommodation in the period of time between when the landlord told her he wanted to end the tenancy and when he said he no longer wished to end it, I note that she indicate secured the new accommodation for her to vacate this rental unit at the end of May 2012.

However, in her submission she indicated that effective date the landlord had identified on February 14, 2012 as the end date of the tenancy to be April 14, 2012 I find it unlikely that the tenant would secure a place that she could not move into until a month and half after the effective date of the end of her current tenancy.

As such, I find the reason for the tenant moving is not as a result of the issuance of any notice on the part of the landlord either verbal or written and therefore I find the tenant has failed to established that she has or will suffer loss for moving from this rental unit as a result of a violation of the *Act*, regulation or tenancy agreement.

### 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: April 27, 2012.

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Residential Tenancy Branch