



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act*. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Both parties filed evidence and served the other party with a copy of their evidence. I have considered all the written evidence including the late evidence filed by the tenant and oral testimony provided by the parties, in the making of this decision, but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Is the tenant entitled to compensation in the amount of \$1,500.00 for loss under the *Act*?

### **Background and Evidence**

The tenancy started in September 2009. The monthly rent is \$980.00 payable on the first of each month.

The tenant stated that sometime in October 2009, he noticed problems with the dishwasher. He stated that while it went through the motions of a complete cycle, the dishes were not properly cleaned. The tenant stated that he informed the landlord sometime after the problem started. The tenant was not sure of the dates of when the problem started and when he notified the landlord. The tenant also stated that he sent the landlord an email but since then his computer crashed and he was unable to retrieve a copy of this email.

The tenant filed letters from his partner and daughter describing problems with the dishwasher. The partner states that she witnessed the tenant inform the landlord about the problem, on the phone and in person, on more than one occasion. However the partner did not provide any details about dates.

The landlord stated that he had not heard from the tenant about the dishwasher until July 2011. He stated that once informed, he visited the rental unit and removed a piece of plastic lodged inside the washer, did a test run and it worked well. The landlord stated that sometime later the tenant made another complaint about the dishwasher and in August 2011, the landlord replaced the dishwasher. The landlord stated that the old dishwasher is currently installed in his kitchen and works very well.

The tenant also stated that the new dishwasher was not properly installed and approximately five weeks prior to the hearing, the dishwasher fell forward bruising his foot. The tenant informed the landlord who visited the rental unit to fix the problem.

The landlord stated that he found the front legs of the dishwasher retracted into a stowed position, thereby tilting the machine forward. The landlord stated that the machine had worked for approximately eight months and he expressed surprise that the front legs of the machine were in a stowed position. The landlord deployed the front legs into a fully extended position and installed a bracket to hold the machine in place.

The tenant stated that right from the start of the tenancy, the shelves that line the inside of the door of the refrigerator were missing. This was recorded on the move in inspection report. The landlord stated that he did not replace the shelves because the tenant did not request them to be replaced and that the refrigerator was replaced in August 2011.

The tenant complained about the shower drain regurgitating waste and the sinks not draining. The tenant stated that he informed the landlord in November 2009 and the landlord came over to fix it three to four weeks later. The landlord stated that he was informed on November 02, 2009 and that he sent his parents over the very next day with a rented router to clear the drain. Subsequent complaints were resolved with the use of a plunger.

The tenant also complained about the face of a drawer that was broken and the floor of the shed that was rotten. The tenant stated that his foot went through the floor causing a minor injury to his ankle.

The tenant is claiming compensation for injuries to his right foot from the dishwasher and to his right ankle from the rotten floor of the shed. The amount of compensation claimed is "*unknown*". The tenant did not file any evidence by way of photographs, doctor's notes or invoices to support his claim for compensation for injuries to his foot and ankle.

The tenant is claiming compensation as follows:

1.	Problematic dishwasher \$50.00 for 24 months	\$1,200.00
3.	Problematic shower drain and sinks	\$300.00
4.	Broken cabinet	\$100.00
	Total	<b>\$1,840.00</b>

### **Analysis**

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain a 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, make it suitable for occupation by a tenant.

#### 1. Problematic dishwasher - \$1,200.00

The tenant stated that he noticed problems with the dishwasher in October 2009 and informed the landlord by phone and email. The landlord stated that he was not informed until July 2011 at which time he attended to the machine and replaced it in August 2011.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the parties offered contradictory testimony regarding when the tenant informed the landlord of the problem.

Based on the testimony of both parties, I find that if the dishwasher was a problem that the landlord ignored after receiving the tenant's complaints, the tenant had the opportunity to file an application for an order directing the landlord to repair or replace the dishwasher.

The problem started in 2009 and the tenant has applied for compensation more than 2.5 years later and almost ten months after the dishwasher was replaced. In addition, in the absence of sufficient evidence to prove that the tenant informed the landlord of the problem and that he did not respond in a timely manner, I find that the tenant is not entitled to compensation and accordingly his claim for \$1,200.00 is dismissed.

#### 2. Loss of use of shelves in the refrigerator - \$240.00

The landlord agreed that he was aware that the shelves in the refrigerator door were missing but stated that the tenant did not request him to replace them. I find that the use of the refrigerator was impacted by the missing shelves until the appliance was replaced in August 2011, thereby resulting in a loss of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the fact that a relatively small portion of the refrigerator was unusable for approximately two years, I award the tenant a minimal award of \$50.00.

### 3. Problematic shower/sinks - \$300.00

Again, both parties offered contradictory evidence regarding the time the landlord took to respond to the complaint. The landlord stated that he received the complaint on November 02, 2009 and sent his parents over to resolve the problem the very next day. The tenant stated that the landlord came by 2-3 weeks later but was not sure of the exact date. The tenant's claim is also approximate and states “2-3 mos @\$100.00 per month - \$300”

In this case, in the absence of sufficient evidence from the tenant regarding the dates of complaint and response from the landlord, I find that the landlord responded to the complaint in a timely manner. Accordingly, the tenant's claim for compensation is dismissed.

However, since the tenant did suffer the inconvenience of problematic plumbing for at least one day, as depicted in his evidence, I find that the tenant is entitled to nominal damages as per *Residential Tenancy Policy Guideline #16*. Based on the testimony of both parties, I find it adequate to award the tenant a nominal award of \$25.00.

### 4. Broken cabinet - \$100.00

The tenant stated that the face of the drawer is broken. Again, the tenant has not provided details of when the problem occurred and when he informed the landlord and therefore I find that the tenant is not entitled to compensation. I order the landlord to repair the drawer within 15 days of receiving this decision.

The tenant has also requested an “*unknown*” amount for compensation for injuries. In the absence of adequate evidence to support this claim, it is dismissed.

However, upon review of the evidence filed by the tenant, I find that the floor of the shed requires repairs and I order the landlord to carry out the required repairs within two months of receiving this decision.

Overall the tenant has established a claim of \$75.00. The tenant may retain this amount from a future rent.

### **Conclusion**

The tenant may make a onetime deduction of \$75.00 from rent for July 2012. The balance of the tenant’s application is dismissed.

I hereby order the landlord to repair the kitchen drawer within 15 days of receipt of this decision and to repair the floor of the shed within two months of receipt of this decision.

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: June 19, 2012.

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Residential Tenancy Branch