



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This was an application by the tenant seeking monetary compensation in the form of a retro-active rent abatement for services and facilities not provided in violation of the tenancy agreement.

Despite being served by registered mail sent on May 29, 2012, the respondent landlord did not appear.

### Issues(s) to be Decided

The issue to be determined is whether or not the tenant is entitled monetary compensation for promised repairs and enhancements that were not done.

### Background and Evidence

The tenancy began on September 1, 2011 with rent set at \$1,200.00 and the tenant paid a security deposit of \$600.00. The tenant testified that, when she was negotiating to rent a unit in the complex, she was shown the rental unit in its existing state, but was also shown another unit as an example of what her unit would look like by the time she moved in. The tenant testified that the landlord promised stainless steel appliances would be installed prior to the move-in date including a dishwasher. The tenant testified that the landlord also committed to resurfacing the balcony.

The tenant testified that, on the date of possession, which was September 1, 2011, she had arranged for friends to assist with the move-in, but they found that the unit was not yet cleaned out and the landlord apparently was unable to grant entry on the move-in date. The tenant testified that, although the landlord emptied and cleaned the unit by the following day, September 2, 2011, she was forced to remain staying with friends until the people who had been scheduled to help her move were finally available, which occurred on September 4, 2012. The tenant stated that, this was the only viable option because hiring movers would have been too costly and difficult to arrange on short notice. The tenant is requesting compensation for 4 days pro-rated rent.

In addition to the above, the tenant testified that she did not receive the dishwasher and refrigerator until mid September and did not receive the new stove until mid-November, 2011. The tenant testified that the installations disrupted her quiet enjoyment. The tenant stated that she was also required to transfer all of her food into the new refrigerator, which would not have been necessary had the landlord supplied the appliances from the start of the tenancy as promised.

With respect to the deck resurfacing, the tenant testified that the landlord has not yet started this work but on several occasions required that the tenant remove all of her belongings from the deck area so that the surface could be assessed, evidently in anticipation for the repair work in future.

The tenant pointed out that other units in the building, that were rented in an un-renovated state had a rental rate of \$900.00 per month and that she agreed to pay \$1,200.00 based on the fact that her unit would be refurbished. The tenant feels that, because she was paying a premium rental rate for improvements that were delayed or not done at all, and given the disruptions as well as the delayed possession, she is entitled to be compensated in the amount of \$627.00 for the devalued tenancy.

### Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are also enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

Oral terms contained in verbal tenancy agreements may be recognized and enforced. Section 1 of the Act, defines "tenancy agreement" as follows:

***"tenancy agreement"*** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit,

*use of common areas and services and facilities, and includes a licence to occupy a rental unit.*

With respect to the tenant's claim for reduced rent due to devalued tenancy, I find that section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find it important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred

In the matter before me, I accept the tenant's testimony that the suite was not ready for occupation on the required date and that this was a violation of the Act and agreement. I find that the tenant mitigated her situation by waiting the four days until her free moving help was available rather than incurring higher costs and possible delay in hiring movers. For this reason, I find that the tenant is entitled to a rent abatement for four days due to the delay caused by the landlord.

I also accept the tenant's testimony that she was shown renovated suites by the landlord as an example of what her rental unit would be like with the promised improvements. I find that the landlord made a verbal commitment to provide the improvements as a term in the tenancy agreement. I find that the landlord was in violation of the agreement to provide these amenities and that the tenant suffered a loss

of value to the tenancy as a result. I find that the tenant's claim has successfully met all elements in the test for damages.

Given the above, I find that the compensation must be granted and that the tenant is entitled to \$677.00 comprised of \$627.00 for the reduced value of the tenancy and the \$50.00 cost of the application.

Conclusion

I hereby grant the tenant a monetary order in the amount of \$677.00. This order must be served on the landlord and, if unpaid, may be enforced through Small Claims Court.

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: July 09, 2012.

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Residential Tenancy Branch