



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC ERP FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for a monetary order for money owed or compensation under the Act, regulation or tenancy agreement, an order for the landlord to make emergency repairs for health and safety reasons, and to recover the filing fee.

The tenant, an agent for the landlord (the "agent") and a witness for the landlord, appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

Both parties confirmed they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the Act.

Issues to be Decided

- Should the tenant be granted a monetary order for money owed or compensation under the Act, regulation or tenancy agreement?
- Should the landlord be ordered to make emergency repairs for health or safety reasons?

Background and Evidence

The parties agree that a fixed term tenancy began on October 1, 2011 and expires on September 30, 2012. Monthly rent in the amount of \$770.00 is due on the first date of each month. A security deposit of \$385.00 was paid by the tenant at the start of the tenancy.

The tenant stated during the hearing that her monetary claim in the amount of \$3,636.97 consists of:

Item #	Description	Amount
1	Junk removal fees - furniture infestation	\$135.00
2	Furniture replacement	\$500.00
3	Food – spoiled by mice, unusable kitchen and oven (\$4.00 for lunch X 45 days)	\$180.00
4	Back rent (half of the rent for 2 months)	\$770.00
5	Additional month of rent (unlivable conditions, smell, couch surfing from July 30 onwards, bacteria, health and safety issue)	\$770.00
6	Moving fees (management refuses to fix any problem or take it seriously)	\$700.00
7	Damage deposit (to relocate due to lack of management)	\$385.00
8	Carpet cleaning (unsanitary, mouse droppings, mouse urine etc.)	\$50.00
9	Time off work (2 hours to file claim, 2 hours to submit evidence, 2 hours during phone hearing)	\$61.50
10	Registered mail to send hearing package	\$10.20
11	Digital prints (photo evidence)	\$15.27
12	2 USB drives (video evidence)	\$10.00
13	Filing fee	\$50.00
	TOTAL	\$3,636.97

The tenant stated that within 2 days of moving in, there was an ant infestation in the rental unit. The tenant stated the cupboard was swarming with ants. The following day, the tenant stated that a cereal bowl was left out and when she returned, it was full of ants. The tenant states that she advised the landlord verbally of the ant problem and within a few days, the building manager attended the rental unit and sprayed an ant spray and left the tenant with the left over ant spray to use as needed. The tenant stated that the ant spray helped for a few days; however, the ants returned and were “coming out of every wall.”

The tenant testified that on October 12, 2011 she called the building manager to advise her of how bad the ant problem was in every room of the rental unit. According to the tenant, the building manager advised the tenant that she will talk to the owner to get a professional and would get back to her. In the documentary evidence submitted by the landlord, the dates do not correspond. The agent indicates in the documentary evidence that they first heard of the ant issue on October 24, 2011 and the building manager first tried to treat the ants with a spray and when that wasn't effective, they brought in a

professional pest control company and the issue was resolved with two pest control treatments. The first treatment was on November 12, 2011 and the second follow up treatment was on December 9, 2011. The landlord stated that they pest control treatment cost the landlord \$3,416.00 as the entire building of 30 rental units was treated, the invoice for which was submitted as evidence. The tenant agreed that there were no problems with ants after the treatments were completed.

On June 14, 2012, the tenant testified that she first discovered mice in her rental unit and contacted the building manager. The parties dispute the dates provided from each other regarding when mice were first reported and the dates when work was completed by the landlord to address the mice issue. The building manager stated that she first heard of the tenant's concerns about mice verbally in July 2012. When the building manager attended she states that she found droppings but not mice. As the tenant owned a ferret, she was not sure what the cause of the droppings was, as both mice and ferrets are rodents. The tenant provided oral and documentary evidence describing the difference between mice and ferret droppings to illustrate the difference and asserted that the droppings were mice droppings and not from her ferret.

The building manager confirms finding a hole in the rental unit in July 2012, and arranged for a building worker to repair the hole. On July 23, 2012 the building manager stated that she attended the rental unit again and found another hole which was filled by the building worker, however, the treatment for mice was complicated due to the tenant owning a ferret which lived both inside and outside of its' cage within the rental unit and has its own food source which attracts mice.

The agent stated they did not receive any concerns from the tenant in writing until receiving a letter by registered mail on August 7, 2012. The agent provided a copy of the residential tenancy agreement addendum as evidence which reads:

“...2- Any maintenance required must be presented in writing directly to the landlord...”

[reproduced as written]

The tenant responded by stating that she didn't think an ant or mice issue was a maintenance issue which had to be put in writing, and confirmed that she advised the building manager verbally of her concerns.

On August 7, 2012 the building manager confirms that they received a letter written by the tenant via registered mail asking for compensation due to the infestation of ants and mice and alleges a slow response by the landlord in addressing her concerns. The building manager testified that on August 7, 2012 she attended the rental unit with the

building worker upon the tenant's request as the tenant thought there was a dead mouse under the fridge. According to the agent's documented summary of events, a dead mouse was not found, however, the rental unit was very dirty and the smell was unbearable and they opened a window for ventilation. In 30 minutes, the smell was gone and the tenant was advised of this.

In a letter dated August 10, 2012, the landlord responded to the tenant by stating that the building manager's husband passed away and that they were awaiting some information from the building manager in regards to her rental unit and that in the interim, they have hired a professional pest control company to resolve her concerns and would be contacting her to advise of the appointment.

The building manager stated that the pest control company treated the building on August 16, 2012 and specifically attended the rental unit. An invoice dated August 16, 2012 from the pest control company was provided as evidence. On the invoice, the pest control contractor indicates that the building was treated and that he attended the rental unit. The contractor wrote on the invoice that the tenant mentioned an issue with wasps and not ants resulting in the contractor treating a wasp nest in wall on patio as well as inspecting for mouse entry points. They recommended that the tenant properly clean up any droppings etc., to monitor for post treatment activity and noted a possible nesting area in the stove. As a result of the notes from the pest control contractor, the landlord replaced the tenant's oven on August 22, 2012. The agent stated that they also needed assistance from the tenant to keep her rental unit clean, to clean up after her ferret, to limit the food source, and to open up her windows to allow fresh air in.

During the hearing, the tenant stated that she last saw a mouse on September 20, 2012, however, she has not seen mice or mice droppings since that date. The tenant stated that 2 mouse traps were set off on September 22, 2012, however, she did not see mice in the traps. The tenant states that she believes there are still mice in the rental unit.

The landlord provided an invoice showing they treated the entire building for mice on September 12, 2012 and that they have another appointment scheduled for October 4, 2012. The agent stated the landlord responds to all tenant concerns as soon as possible, however, they stress that the tenancy agreement addendum requires that the tenant put maintenance requests in writing so they can address any concerns.

The tenant has claimed \$500.00 for furniture replacement and \$135.00 for the removal and disposal of her old furniture. The tenant did not provide receipts or other corroborating evidence to support the value of the furniture. The agent stated that the

tenant received the furniture for free from another tenant who was discarding the old furniture and delivered to the tenant's rental unit at her request. The agent provided a signed statement as documentary evidence from the other tenant who provided the furniture to the tenant at no cost. The agent's position is that the tenant did not suffer a loss as the furniture was given to her at no cost and was being disposed of. Photos of the furniture were provided by the tenant showing the condition of the furniture prior to the disposal, however, there were no photos showing the original condition of the furniture and whether it was in better condition at the start of the tenancy. The tenant did not dispute the testimony of the agent with respect to the furniture being provided to her at no cost.

The tenant has claimed \$180.00 for food consisting of \$4.00 for lunch for 45 days due to an allegedly spoiled food due to mice, an unusable kitchen and oven. The tenant did not provide receipts for the amount being claimed, however, and estimates that she spends about \$4.00 for lunch and is seeking compensation for 45 days for lunch. The agent responded to this claim by stating that going out for lunch is a lifestyle choice and, therefore, not something that the landlord should be required to compensate the tenant for.

The tenant states that her claims for \$1,540.00 for back rent is calculated at half of rent for two months and an additional full month of rent due to unliveable conditions, the smell, her couch surfing from July 30 onwards, bacteria, health and safety issues. The tenant did not provide witness testimony or other corroborating evidence to support that she could not reside in her rental unit. The agent stated that they responded to her verbal concerns as soon as possible, however, the tenant owing a ferret that was outside of its' cage complicated matters and resulted in difficulties troubleshooting and in the treatment for ants and mice.

The tenant has claimed \$700.00 for moving fees because she no longer wants to reside in the rental unit, but cannot afford to move. During the hearing, the agent offered to settle with the tenant regarding ending the tenancy, however, the tenant refused to accept the agents offer and stated that she did not want to agree to end the tenancy. The tenant did not provide quotes or other documentary evidence to corroborate the moving fees being claimed. The tenant continues to occupy the rental unit and confirmed during the hearing, that she does not want to agree to end the tenancy. In addition to the filing fee, the tenant has also claimed for the costs relating to taking time off work to apply for dispute resolution and prepare the evidence for her application, to produce the photos, and for USB drives, the latter of which was not compatible with our computer systems so could not be accessed and was therefore excluded as evidence as a result.

The tenant's evidence also included documented timelines, photos, a wireless usage invoice, information on mice and ferrets, a letter from the pest control company and a ferret vaccination certificate.

The landlord's evidence included witness statements, timelines of events, the tenancy agreement addendum, a complaint letter from tenant received August 7, 2012, the landlord's response letter, invoices from pest control companies, photos of a ferret and information on ferrets and mice. The landlord's evidence also included a letter to tenants from the pest control company and from the landlord, and 3 witness statements from other tenants in the building stating that they have no issues with ants, and a letter from another tenant who gave the furniture at no charge to the tenant, after he had received it at no charge from another person previously.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

For ease of reference, I will use item numbers from the tenant's itemized list of claims located on page 2 of this Decision.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage.

Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Items 1 to 5

1	Junk removal fees - furniture infestation	\$135.00
2	Furniture replacement	\$500.00
3	Food – spoiled by mice, unusable kitchen and oven (\$4.00 for lunch X 45 days)	\$180.00
4	Back rent (half of the rent for 2 months)	\$770.00
5	Additional month of rent (unlivable conditions, smell, couch surfing from July 30 onwards, bacteria, health and safety issue)	\$770.00

I find that all 5 of these items being claimed by the tenant fail to meet the test for damages or loss. The tenant has not met the burden of proof that the landlord breached the *Act* by failing to respond to her concerns regarding ants and mice. Section 32 of the *Act* states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The tenant has failed to prove that the landlord failed to provide and maintain the rental property in a state of decoration and repair that complies with health, safety, and housing standards by law. The landlord provided documentary evidence that they treated the entire building for both ants and mice in a reasonable time period after

becoming aware of their concerns. The landlord also provided witness statements from other tenants indicating that the ant issue was resolved. Regarding the mice issue, the landlord has already treatment the entire building for mice and has another treatment scheduled for October 2012. The tenant did not provide witness testimony or other corroborating evidence that mice continue to be a problem in her rental unit. The photos provided by the tenant of mice and alleged mice droppings were not dated or time stamped, nor did the tenant write this on the back of the photos, with the exception of one photo showing a mouse in a cup and the date of June 27 hand written on the back of the photo. As a result, I afford the photos little weight in my Decision.

Section 33 of the Act covers emergency repairs and states:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

As a result of the above, **I do not find** that the treatment for ants and mice constitute an emergency repair. The landlord states in the written tenancy agreement that concerns must be in writing and presented directly to the landlord. I find that the tenant failed to comply with the tenancy agreement by failing to note her concerns in writing, until her letter dated August 1, 2012 which was received by the landlord on August 7, 2012. In that letter, the tenant is seeking compensation, however, I would expect that prior to seeking compensation, the tenant would at the very least, document her concerns in writing pursuant to the wording of the tenancy agreement that she signed. The tenancy agreement addendum states:

“...2- Any maintenance required must be presented in writing directly to the landlord...”

[reproduced as written]

I find that maintenance required and concerns regarding the tenancy are one in the same. I do not accept the tenant's position that she did not know that ants or mice were maintenance issues.

Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**

[emphasis added]

I find that the tenant did not do whatever is reasonable to minimize the damage or loss and permitted the amount of her claim to grow without ever submitting a complaint to the landlord of the alleged damage or loss until her written letter on August 1, 2012, seeking compensation.

As there is no proof of mice in the rental unit, I **do not** order emergency repairs pursuant to the tenant's request in her application. I **caution** the tenant to ensure that any future concerns regarding her tenancy be put in writing to the landlord so that these may be documented and addressed pursuant to the tenancy agreement.

I find that as the tenant received the furniture for free and there was no evidence to substantiate the condition of the furniture at the start of the tenancy, the tenant has not suffered a loss. Regarding the junk removal claim, the tenant provided a receipt for junk removal, however, did not meet the burden of proof in proving that the landlord breached the *Act*, regulation or tenancy agreement resulting in a damage or loss relating to the need for junk removal.

Items 6 and 7

6	Moving fees (management refuses to fix any problem or take it	\$700.00
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	seriously)	
7	Damage (security) deposit (to relocate due to lack of management)	\$385.00

As the tenant continues to reside in the rental unit, **I find** that a claim for moving fees and her security deposit is premature until the tenancy has ended in accordance with the *Act*.

Item 8

8	Carpet cleaning (unsanitary, mouse droppings, mouse urine etc.)	\$50.00
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The tenant failed to provide evidence to support the need for carpet cleaning. In addition, the tenant confirmed during the hearing that she has a ferret which is not caged at all times and, therefore, on the balance of probabilities, could be contributing the smell. The witness for the agent stated that upon entering the rental unit, the rental unit was very dirty and the smell was unbearable which was not disputed by the tenant. Section 32 of the *Act* requires that the tenant maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant did not provide evidence of routine cleaning, witness statements or other corroborating evidence. Therefore, **I dismiss** the tenant's claim due to insufficient evidence and without leave to reapply.

Items 9 to 13

9	Time off work (2 hours to file claim, 2 hours to submit evidence, 2 hours during phone hearing)	\$61.50
10	Registered mail to send hearing package	\$10.20
11	Digital prints (photo evidence)	\$15.27
12	2 USB drives (video evidence)	\$10.00
13	Filing fee	\$50.00

The *Act* does not provide for a remedy for the applicant's time to prepare and participate in the dispute resolution under the *Act*, other than to seek the recovery of the filing fee which is described below. Given the above, **I dismiss** the tenant's claim for time off work, for registered mail, for digital print and for 2 USB drives, without leave to reapply.

As the tenant was not successful in her application, I **do not** grant the recovery of the filing fee.

Conclusion

I dismiss the tenant's application in full.

I do not grant the tenant recovery of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 2, 2012

Residential Tenancy Branch