



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI MNDC OLC FF

### Introduction

This hearing convened on December 21, 2012, for seventy minutes and reconvened for the present session January 28, 2013 for forty two minutes.

The hearing dealt with an Application for Dispute Resolution filed November 15, 2012, by the Tenant to dispute an annual rent increase, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to have the Landlord ordered to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

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. Has the annual rent increase been issued in accordance with the Act?
2. Should the Tenant be issued a Monetary Order?
3. Has the Landlord breached the Act, regulation or tenancy agreement?

## Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: a Notice of Annual Rent Increase dated August 20, 2012; a 10 Day Notice; Canada Post Receipts; a 20 page magazine or brochure which included the Tenant's written submission, photos from inside the rental unit, parking area, and exterior of the building from 2006 and photos taken in 2012 just prior to work being performed.

The Landlord submitted documentary evidence which included, among other things, copies of: their written submission; building security efforts with the RCMP; pest control inspections and invoices; invoices of repairs done to the Tenant's rental unit; cleaning receipts; yard clean up and maintenance receipts; waste removal invoices; security notices; landscaping notices; reference letters for the new resident manager; annual rent increases from August 2009 and August 2012; and photos taken in December 2012, showing the building, yard, and parking area with security cameras.

The parties confirmed the Tenant entered into a tenancy agreement that began on January 1, 1997. Effective December 1, 2012 the Tenant's rent will increase from \$1,028.00 to \$1,072.00 and is due on the first of each month. On January 1, 1997 the Tenant paid \$350.00 as the security deposit.

Upon review of the annual rent increase dated August 20, 2012, the Tenant confirmed that the notice was issued and served in accordance with the Act. I directed the parties to the rent increase notice which states:

- *A tenant may not apply for dispute resolution to dispute a rent increase that complies with Part 3 of the RTA.*

The Tenant acknowledged that he is now aware that he cannot dispute the rent increase. He clarified that he was seeking the Landlord to reduce his rent for being a good tenant for so many years and for having to deal with the aftermath of the flood and so many required repairs.

The Tenant submitted that he is claiming \$25,000.00, in part, for losing possessions during the flood which occurred May 11, 2006 and June 8, 2006. He confirmed that he did not have tenant insurance and argued that no one told him to have insurance. He confirmed that he knew about insurance and instead of getting coverage he made sure someone was home at all times. He said he never thought he would lose his possessions because of a flood.

In addition to compensation for his possessions, the Tenant included a request for compensation for the stress of his family having to live in a hotel for 28 days during the flood remediation. He confirmed that the Landlord paid the hotel fees; however, it was very stressful living day by day wondering when they could move back home. The Tenant stated that he did not seek compensation earlier because he was waiting to get better.

The Tenant is also seeking compensation for the loss of privacy after the trees and bushes were removed from the yard; his ivy which was cut down from the side of the building, his potted plants that were trimmed; and for his train set that went missing from a storage room located across from his unit which he believes the resident manager took.

Upon review of the repair items listed in the Tenant's written submission he noted that he wanted the Landlord ordered to complete the following:

- Remove pieces of trees or sharp wood from the walk way area
- Remove access to plumbing in ceiling above shower and have solid drywall with no access
- Repair / replace lock on his children's bedroom window
- Repair a hole at the corner which the Tenant believes mice are entering through
- Repair pot hole in front of gate
- Repair water leaks in the parking garage
- Have pest control company attend monthly

The Resident Manager advised that she has been employed at this building since October 2012 and has been working very hard to get this building safe and clean. She noted that the Tenant has never put his repair requests in writing and pointed to her evidence which supports they have been attending to his requests in a timely fashion.

The Resident Manager pointed to their documentary evidence while discussing how they attended to the Tenant's repair requests as follows:

- Remove pieces of trees or sharp wood from the walk way area
  - The yard maintenance is ongoing. They had to trim bushes for security reasons and they removed the ivy and all vegetation growing up the side of the building as it was going into other tenant's units and is a mold hazard.

- Remove access to plumbing in ceiling above shower and have solid drywall with no access
  - The ceiling plumbing access is covered with a painted piece of wood and there are no bugs coming out of it. It will not be closed off as they need access to the pipes.
- Repair / replace lock on his children's bedroom window
  - The Landlord believes there is a functioning lock on the bedroom window.
- Repair a hole at the corner which the Tenant believes mice are entering through
  - They inspected this area and it is not a hole it is a corner flashing to allow water drainage. Mice cannot enter through this flashing
- Repair pot hole in front of gate
  - There is a pot hole but it cannot be repaired during the winter
- Repair water leaks in the parking garage
  - They cannot attend to everything immediately. They will be looking at maintenance requirements for the parking garage in the summer
- Have pest control company attend monthly
  - They have arranged to have the pest control company come monthly now.

The Resident Manager argued that the Tenant did not point out all of these items during their inspection. He did not say anything about mold, a problem with the kitchen cabinets or bugs coming from the bathroom ceiling access hole. She confirmed that his unit has not been updated as some other units have when they become vacant. She argued that there is nothing wrong with his flooring or cupboards so they would not change them for cosmetic reasons.

The Resident Manager advised that the storage room which the Tenant claims his train set was stolen from is not meant for tenant use. She noted that she was never provided a key or master key for this room when she was first hired. She said she saw other tenant's possessions in this room so someone else must have had a key. She has since had the lock smith change the lock on this room and has provided the Tenant with a key. She intends to provide the Tenant with proper notice that he will no longer have access to this room, as it was designed as a utility room for managers, not additional storage for tenants. The Tenant does have access to the storage room designated for his apartment.

At this point the hearing time was about to expire. I issued the Landlord a verbal order to inspect the lock on the children's bedroom window to ensure it was functioning properly. The Landlord was further ordered to repair the lock immediately, if required.

I informed the parties that we would be reconvening the hearing to hear the rest of the Landlord's submission and closing remarks. I informed both parties that I would not accept additional documentary evidence pertaining to this matter.

When the hearing was reconvened on January 28, 2012 the Resident Manager confirmed she inspected the children's bedroom window on December 21, 2012 at 12:53 p.m. and found that there was no lock on the window. She left the Tenant with the two locks she had with her at the time of the inspection, one which required to be screwed in and the other which did not. She said she made sure to inspect all of the windows before she left to ensure they were all locking properly.

The Landlord submitted that the Tenant has never complained about the presence of mold, only problems with mice and his need to have the carpet steam cleaned. They noticed gaps between the carpet and the walls so they installed baseboards to cover the gaps in attempts to reduce access for the mice. They did not see mold and stated the walls would be soft if they were moldy which would prevent them from nailing the baseboards to them.

In closing the Landlord confirmed they wanted to work with the Tenant and had arranged to have the Tenant's entire bathroom painted and the one kitchen cabinet replaced. They had the pest control technician spray the plumbing access hole in the bathroom to prevent the occurrence of spiders or bugs, even though there was no indication of their presence. Also, the Landlord has plans to cover the leaking parking area when the winter rains stop and they are working to make the building better for everyone.

The Tenant acknowledged that the pest control company attended his unit in December 2012 and January 2013. He has not seen a mouse since they began their monthly treatment program. He argued that he had put his concerns in writing to the previous managers but they ignored his complaints.

The Tenant confirmed that the majority of his repair requests have now been attended too; however, the issue of the mold still remains. He pointed to his photos on page 16 of his evidence and argued that those photos were taken immediately before the Landlord covered up the mold with baseboards on walls in his hallway and in his hallway closet.

### Analysis

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.

In this case the Tenant filed an application on November 15, 2012 for monetary compensation of \$25,000.00 to cover losses suffered more than six years ago, after his apartment flooded on May 11, 2006 and June 8, 2006.

Upon review of the evidence before me I find there is insufficient evidence to prove that it was the Landlord's breach of the Act which caused the flood. Furthermore, there is insufficient evidence to prove the Tenant mitigated his loss by having tenant's insurance or by seeking a remedy sooner.

Notwithstanding the Tenant's argument that he was dealing with medical issues, he chose to wait more than six years to file his application. The Limitation Act provides that the right to bring an action for damages in respect of injury to person or property, including economic loss arising from the injury, ends at two years from the date on which the right arose, whether based on contract, tort or statutory duty.

Based on the above, I find the Tenant has filed his claim outside of the limitation period. Furthermore, I find he has provided insufficient evidence to meet the test for damage or loss, as listed above and I dismiss his claim of \$25,000.00, without leave to reapply.

I find there is insufficient evidence to prove the Landlord or any of their agents were responsible for the disappearance of the Tenant's train set. Furthermore, I accept that the removal of the brushes and trimming back of the plants and shrubs was required as maintenance. Therefore, I dismiss the Tenant's claim for compensation for the train set or loss of privacy or enjoyment.

Section 43 (2) of the Act stipulates that a tenant may not make an application to dispute a rent increase that complies with the Act.

In this case, the Tenant acknowledged that the rent increase was issued and served to him in accordance with the Act. Therefore, I dismiss the Tenant's request to dispute a rent increase.

Upon further clarification of the Tenant's application he stated that he was seeking to have his rent reduced as compensation for having to live in such a stressful situation after the flood and for having to deal with the repair concerns.

Based on the written submissions of the Tenant I find the Tenant interpreted his request to dispute the annual rent increase to be a request for reduced rent for repairs, services or facilities agreed upon but not provided. Accordingly, I amended the Tenant's application to include that request, pursuant to section 64 of the Act.

Upon review of the evidence before me I accept the Tenant's submission that the Landlord delayed taking action to repair or maintain his rental unit. I noted that most of the work was performed around the time the Tenant filed his application for dispute resolution in November 2012. That being said, there is insufficient evidence to support the Tenant informed the Landlord of his requests or that he put his requests for repairs in writing prior to engaging in this hearing process. Therefore, I find there to be insufficient evidence to support the claim for compensation for the delay in enacting repairs.

The Landlord has agreed to paint the Tenant's bathroom and to replace the kitchen cabinet which the Tenant stated was damaged. The parking lot issues are scheduled to be looked after in the spring, after the winter rains cease, which leaves the issue surrounding the presence of mold in the Tenant's hallway and hallway closet.

In the presence of disputed verbal testimony, and after considering the extent of the flood that occurred six years earlier, I accept the Tenant's photographic evidence to support there was mold on the hallway walls and in the hallway closet just prior to the Landlord installing baseboards. Furthermore, I accept that the mold was covered up when the baseboards were installed, which is a breach of section 32 of the Act.

Based on the foregoing, I hereby Order the following:

- The Tenant is to reduce his rent payments by \$150.00 per month starting February 1, 2012; and
- The Tenant will continue to pay reduced rent until the Landlord has served him with a written report obtained from a licensed mold inspector, who inspected the Tenant's rental unit; and

- Until the Landlord has completed any required remediation or repairs as indicated in the mold inspector's report; and
- Until the Landlord has filed an application for dispute resolution and obtained an Order instructing the Tenant to resume paying full rent.

The Tenant has partially been successful with his application; therefore I award partial recovery of his filing fee in the amount of **\$50.00**.

### Conclusion

The Tenant may deduct the one time award of \$50.00 from his next rent payment as recovery of \$50.00 from his filing fee.

Effective February 1, 2013, the Tenant is hereby Ordered to reduce his rent by \$150.00 per month until the Landlord obtains an Order for him to resume his full rent payments.

For clarity, the Tenant is to make rent payments as follows:

February Rent:      \$1,072.00 - \$50.00 filing fee - \$150.00 Order equals  
**Payment of \$872.00 due on February 1, 2013.**

March Rent:          If an Order has not been issued to resume full rent  
\$1,072.00 - \$150.00 Order equals  
**Payment of \$922.00 due on March 1, 2013;** and continuing

Rent remains at **\$922.00** per month until the Landlord obtains an Order to resume full rent, as noted above.

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: January 28, 2013

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Residential Tenancy Branch



