



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: MND, FF  
Tenants: MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent; her witnesses; the tenant; and his agent.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation for damage or loss resulting from the tenancy and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began prior to the landlord's agent taking over duties in 1998. The tenant submits the tenancy began at least 25 years ago. The parties agree the monthly rent of \$710.00, including parking due on the 1<sup>st</sup> of each month.

The parties also agree that the tenant and the landlord's agent's daughter were in a relationship for a period of time during the tenancy. The tenant submits that while they were involved the landlord's agent and her daughter decided to undertake renovations to the rental unit. The tenant submits that he began the work and that they both helped him, in particular with the clean up.

The tenant testified that this work began in June 2010 and that this was around the time that he and the landlord's agent's daughter broke up for the second and final time. The landlord's agent's daughter testified that she had never told the tenant that he had permission to make any renovations but that if he wanted things fixed he must put them in writing to present to the landlord's agent.

The landlord's agent testified the tenant was never given approval to undertake any renovations and that she had never helped with any of the work started or completed by the tenant.

The landlord's agent submits that in November 2011 she attended the rental unit with her contractor after the tenant requested the replacement of carpeting in the rental unit. The landlord's agent testified that after her contractor returned to begin installation of the flooring he reported to the landlord that the rental unit had been altered.

The landlord's contractor testified that when he attended the room to originally discuss the replacement of flooring in the rental unit it was intact but when he returned to install the flooring the kitchen cabinetry had been dismantled and the unit had been reduced from a 3 bedroom unit to a 1 ½ bedroom unit.

The landlord seeks compensation for the required repairs in the amount of \$3,874.84 as per the following table:

Description	Amount
Drywall/mud	\$93.70
Lumber	\$66.03
lamine and edging	\$376.90
General labour – 18 hrs at \$25.00 per hr	\$450.00
Labour – Cabinets – assemble/install – 16 hrs @ \$25.00 per hr	\$400.00
Labour – countertop fabrication – 4 hrs @ \$25.00 per hr	\$100.00
Purchase of cabinets and countertop	\$2,387.84
<b>Total</b>	<b>\$3,874.47</b>

The tenant submits that no renovations have been undertaken in the rental unit, other than these renovations, during the 25 years of his tenancy and the Residential Tenancy Policy Guideline #40 lists the useful life of building elements for the following items as such:

- Interior Paint – 4 years;
- Carpets – 10 years;
- Aluminum windows – 20 years;
- Stove – 15 years;
- Tubs and toilets; - 20 years;
- Light Fixtures; - 15 years;
- Rewiring – 25 years; and
- Cabinets – 25 years.

The tenant submits that he seeks compensation for the equivalent of 18 months at \$100.00 for the "loss of use and comfort in his apartment" - having to live in the

uncompleted renovations and for verbal and documentary mistreatment and general deterioration of his peaceful enjoyment.

The tenant submits that as a result of the issues between the parties the landlord's agents have treated the tenant and his fiancé in a tone, in both verbal and written communication that is not appropriate and has put the landlord/tenant relationship in dire straits. The tenant has provided no examples of documentary mistreatment or any other evidence corroborating his claims of any type of verbal or other mistreatment.

### 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 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In the case before me the tenant contends that he had a verbal agreement with the landlord that he could begin renovations to the rental unit and that the landlord's agents even helped him with the "deconstruction" work in 2010. The landlord's agents contend that the tenant did not have permission to do any work and the agent or the landlord's witness both testified that they did not assist the tenant in any manner.

As the tenant acknowledges that he did the work that required the landlord to complete the noted repairs, the burden is on the tenant to provide sufficient evidence that he had the landlord's permission to undertake this work. As the landlord's agent and witness have disputed that they ever gave the tenant permission to begin any work it is

incumbent on the tenant to provide additional and corroborating evidence to establish that he either the landlord's or his agent's permission.

As the tenant has failed to provide any evidence other than his testimony, I find the tenant has failed to establish that he had the landlord's permission to begin any form of renovation. As such, I find it was the tenant who caused damage to the rental unit and in accordance with Section 32(3) the tenant is responsible for the cost of repairs to the rental unit.

In relation to the value of the landlord's claim I find the landlord has provided sufficient evidence to establish the value of most of the claim with the following exception. The estimate for the cabinetry purchased is for \$2,178.40 and the landlord has claimed \$2,387.84 for "purchase price for cupboards & counters".

However, I also note that the landlord has included in the claim costs for countertop laminate, edging and 4 hours labour for making the countertops in the total amount of \$476.90. As such, I find the landlord has established the value of the cabinetry to be \$2,178.40 only.

While the tenant draws my attention to the Residential Tenancy Policy Guideline #40 he lists 8 specific items and their useful lives. From this list the landlord is only claiming compensation for the 8<sup>th</sup> item – the cabinetry.

While I accept that the Policy Guideline stipulates the useful life of 25 years for cabinetry this section is used as a general guideline in conjunction with the physical condition of the cabinetry to determine if the cabinets need replacement, however in the case before me, I find that it was the tenant's actions that caused the need for replacement of the cabinetry and there is now no ability to determine if the cabinetry that the tenant removed would have *required* replacement.

As such and when combined with the fact that the landlord's are not claiming any other costs from the tenant's list of items taken from the Policy Guideline #40 or in fact from the guidelines themselves, I find Policy Guideline #40 is not applicable in these circumstances.

As to the tenant's claim, I find as the tenant has failed to provide evidence that he had the landlord's permission to begin any renovation work that caused him to live without certain facilities, like a kitchen, while the work was in progress it was the tenant who put himself in this situation and can therefore not be compensated for any loss of value of the rental unit.

In relation to the tenant's claim for compensation due to the landlord's agent treatment of him, I find the tenant has failed to provide any evidence that the landlord's agent or family has treated him in any way that would warrant any loss of quiet enjoyment of the rental unit. For these reasons, I dismiss the tenant's claim in its entirety.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,715.03** comprised of \$3665.03 owed as outlined above and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that 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: February 12, 2013

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Residential Tenancy Branch