



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FF, MNDC, OLC, PSF, RP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to have the landlord make emergency repairs for health and safety reasons, to have the landlord comply with the Act, for money owed or compensation for damage or loss under the Act, to provide services or facilities, and to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer **only to the relevant facts and issues** in this decision.

Preliminary issues

This matter was before me on November 30, 2012, and January 17, 2013 and on both of those dates the parties were able to resolve some of the issues by settlement agreement. The settlement agreements were recorded, and orders were made based those agreements and should be read in conjunction with this Decision

At the end of the hearing the landlord and tenant were instructed to provide a copy of the move-in conditional inspection report for the basement unit via fax, by March 15, 2013, for my consideration. On March 15, 2013, a copy of the move-in condition inspection report was submitted by the tenant. However, the tenant provided addition documents to further argue her case. Any documents, that were not requested were not reviewed or considered. The landlord did not provide a copy of the requested report.

On March 21, 2013, the tenant submitted further evidence to argue her case, again, these documents were not reviewed or considered.

Issues to be Decided

Should the landlord be ordered to make repairs?

Is the tenant entitled to monetary compensation for loss or damages?

Background and Evidence

The tenancy began on January, 1, 2012. Rent in the amount of \$2,200.00 was payable on the first of each month. On February 21, 2012, the parties amended the tenancy agreement, to include a one bedroom basement suite, which the tenant was permitted to sublease. Rent in the amount of \$2,600.00 was payable on the first of each month. A security deposit of \$1,300.00 and a pet damage deposit of \$550.00 were paid by the tenant.

The parties agreed a move-in was completed. Filed in evidence is a copy of the condition inspection reports for both upper and lower unit, which are under the tenant's tenancy agreement.

The tenant seeks the following relief:

A.	Remove the basement suite apartment from the amended tenancy agreement
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The tenant testified that she would like to have the basement suite apartment removed from her tenancy agreement. The tenant stated she had the basement suite added to her agreement as she wanted to be able to sublease the unit to a friend. The tenant stated that did not work-out.

The landlord testified that the house is zoned for two dwellings and as there is another unit already rented that is not part of the tenants agreement, she does not agree to release the tenant from the amended agreement.

The tenant seeks the following relief:

Item	Repairs requested		Loss of use calculation	amount
1.	Heat dial broken			
2.	Removal of garbage at side of house			
3.	Dimmer light knob missing (front room)			
4.	Electrical wires hanging out of wall (living room)			
5.	Electrical wires exposed under kitchen cupboard			
6.	Recess lighting in kitchen not working			
7.	screen door missing from			
8.	Heating problem (it is unevenly	Jan-Mar	\$100.00 x 7 months	\$ 700.00

	distributed) (AD)	Oct-Jan		
9.	Bathroom drawer broken (master)			
10.	Carpet			
11.	Electrical issue with pendent lights			
12.	Backstairs and Side Gate (AD)		\$50.00 x 11 months	\$ 550.00
13.	Backyard (AD)	Oct-Jan	\$100.00 x 3 months	\$ 300.00
14.	Closet rack (pink bedroom)			
15.	Closet rack (master)	May-Nov	\$40.00 x 7 months	\$ 280.00
16.	Closet rack (master) repairs			\$ 75.00
17.	French door	Oct-Dec	\$20.00 X 2.5 months	\$ 50.00
18.	Garage Door	May-Oct	\$15.00 x 5 months	\$ 75.00
19.	Toilet seat broken (powder room)	Oct-Jan	\$20.00 x 3 months	\$ 60.00
20.	Toilet seat repair cost			\$ 35.00
21.	Washing machine (AD)	May-Aug	\$50.00 x 3 months	\$ 150.00
22.	Removal of screws and picture hooks			
23.	Curtain hook damage to wall in kitchen			
24.	Painting			\$ 194.39
25.	Jacuzzi tub sprayer (AD) Jacuzzi tub tiles- grout	Dec-Jan, Oct-Jan	\$10.00 x 5 months	\$ 50.00
26.	Kitchen faucet (AD)	Mar-No	\$50.00 x 8 months	\$ 400.00
27.	Wood rot under kitchen counter			
28.	Basement suite repairs (blinds, kitchen faucet, caulking)			
29.	Toilet running (AD)	Jan-Jan	\$30.00 x 12 months	\$ 360.00
30.	Loss of quiet enjoyment (5% of rent)		\$110.00 x 2 mos. + \$130.00x 11 mos.	\$1,650.00
31.	Aggravated Damages (3% of rent) for # 8, 12, 13, 21 ,25,26, and 29		\$66.00 x 2 mos. + \$78.00 x 11 mos.	\$ 990.00
	Filing fee			\$ 100.00
	Total claimed			\$6,019.39

Items 1 - 2

During the hearing the tenant withdrew this portion of the claim.

Items 3 to 7

Item 3 - The tenant testified that the knob on the dimmer switch is missing, and even though it is cosmetic she would like to have the knob replaced. Filed in evidence is a photograph of the dimmer switch.

The landlord testified that the knob was missing prior to the tenant taking possession and the missing knob does not affect the dimmer light. The landlord stated she has attempted to find a replacement knob, but has been unable to locate one.

Item 4 - The tenant testified that she would like the landlord to have the electrical wires that are hanging out of the wall in the living room on both sides of the fireplace covered or pushed back into the wall and have the wires located near the floor covered up. Filed in evidence are photographs of the wires.

The landlord testified that the wires in the living room were installed for the purposes of attaching a surround sound system. The landlord stated these wires are not connected to an electrical source and there is no health or safety risk for the tenant.

Item 5 - The tenant testified that there is an exposed wire under the kitchen cupboard and would like the wire to be removed or have the light fixture attached. Filed in evidence is a photograph of the lighting.

The landlord testified that when the house was built the wires installed were for valance lighting, however, the lighting was not installed and there is no health and safety issue.

Item 6 - The tenant testified the recess lighting in the kitchen is not working and would like that landlord to make the repair. The tenant stated the lighting has never worked since taking possession of the rental unit. Filed in evidence is a photograph.

The landlord testified that the lighting has never worked since she purchased the property and is merely decorative and does not impose a health or safety risk to the tenant.

Item 7 - The tenant testified the screen door is missing and would like it replaced. The tenant stated there is a screen door at the side of the house and believes that may be the screen for this door. Filed in evidence is a photograph.

The landlord testified that the screen door was never installed and it does impose a health or safety risk to the tenant.

Item 8

The tenant testified that the heat is disturbed unevenly through the rental unit and would like system to be replaced.

The landlord testified that the since the last hearing the furnace has been serviced and the heating ducts were cleaned and there was no issues reported back by the service companies. The landlord stated the heating system is fully functional.

The tenant argued that when the furnace was serviced the repair person found the furnace to be shut-off. The tenant stated that she has had no heat since the tenancy commenced in January 2012.

Item 9

The tenant testified that the bathroom drawer in the master bathroom is broken and seek to have the drawer repaired.

The landlord testified that the tenant has never notified them that there was any problem with the bathroom drawer. The landlord stated she will have someone look at the drawer and if the drawer can be repaired she will have the repair made.

Item 10

The tenant testified the carpets need to be replaced as they are fraying and it is difficult to vacuum. Filed in evidence are photographs of the carpets.

The landlord testifies the carpet fraying is minor and does not impose a health or safety risk. The landlord stated they would agree to have the carpet looked at and see if the fraying could be repaired to maximize the carpet lifespan.

Item 11

The tenant testified the pendent lights in the kitchen have not been repaired as agreed to at that previous hearing date.

The landlord testified that she contacted the electrician and he was waiting for a part to arrive and the lighting will be fixed as soon as the part arrives.

Item 12

The tenant testified that the backstairs and gate have not been fixed as agreed upon at the previous hearing.

The landlord testified that the backstairs and gate have not been completed as the original contractor no longer wanted to be involved with the job and she alleged the tenant was interfering with the repairs. The landlord stated they have hired a contractor and he will be fixing the stairs and the gate shortly and is waiting for a day without rain.

The tenant testified that she seeks compensation for loss of use of the stairs and gated for the period of eleven months.

Item 13

The tenant did not provide any evidence of the issue of the loss of use of the backyard.

The landlord writes in their submission, "I have no idea what the issue is with the backyard".

Item 14

The tenant testified that a shelf in the pink room closet needs to be repaired. The tenant stated the shelf is approximately two and a half feet and it was not fastened to a stud properly and fell off the wall when using the shelf for storage. The tenant stated she has had no issues with the other shelving in the pink closet. Filed in evidence is a photograph of the wall.

The landlord testified that she believes the tenant overloaded the shelf causing it to fall from the wall, but the landlord stated is also possible to have fallen from normal wear and tear.

Items 15 -16

The tenant testified that one night in May 2012, she heard a big bang and discovered that part of the closet rack in the master bedroom had fallen off the wall. The tenant stated that the wall the shelving was located on does not have any studs as a pocket door goes into that portion of the wall. Filed in evidence are photographs of the closet.

The tenant testified she informed the property manager and when they inspected the closet there was no issue with the landlord making the required repair. However, shortly after that the landlord stated they would not be fixing the shelving due to tenant damage.

The tenant testified on November 21, 2012, she paid to have the closet repaired and it cost her \$75.00. The tenant seeks to recover the cost of the repair.

The tenant testified she also seeks to be compensated for loss of use for a period of seven months at the rate of \$40.00 per month.

The landlord testified that her property manager attended and determined it was the tenant who damaged the shelf due to items being too heavy for the shelving unit. The landlord stated the tenant has suffered no loss of use as there is adequate shelving throughout the unit.

Item 17

The tenant testified the glass fell out of the french door. The tenant stated the glass did not break and was safely stored. The tenant stated the glass in the door was not properly secured as part of the moulding, which holds the glass in the frame, was missing. The tenant stated the landlord refused to reinstall the glass in the door as they believed it was damaged caused by the tenant being neglectful. The tenant stated she seeks to recover \$14.11. Filed in evidence is a copy of the receipt.

The tenant testified she is seeking to recover two months of loss of use as she kept the door closed, to eliminate noise and keep the draft out.

The landlord testified this is not normal wear and tears, as glass just does not fall out of a door after a door has been installed for six years. The landlord stated she did not send out the property manager to inspect the door.

The landlord testified that there was no loss of use as claimed by the tenant. The landlord stated there is no draft coming into that room as alleged. The landlord stated she lived in the unit and the door was merely decorative.

Item 18

The tenant writes in their submission they are seeking compensation for the garage door.

The landlord writes in their submission that they have never heard of any issues with the garage door and no evidence has been submitted to explain anything wrong with the garage door.

Items 19 – 20

The tenant testified the clip at the back of the toilet that locks the seat into the porcelain portion of the toilet was broken. The tenant stated she informed the landlord, however, they refused to replace the toilet seat as they claimed it was tenant damage. The tenant stated she paid to replace the toilet seat and seeks to recover the amount paid of \$35.00. Filed in evidence is an invoice for the toilet seat.

The tenant testified she is also seeking loss of use for three months at the rate of \$20.00 per month.

However, when the tenant was questioned on the use of the toilet, it was apparent that the toilet facility was still usable and there was no loss of use.

The landlord testified they did not inspect the toilet seat and alleged it was damaged by the tenant.

Item 21

The tenant testified that the washing machine broke under normal use. The tenant stated when the property manager attended he opened the machine and claimed it was tenant damage and refused to have the appliance repaired. The tenant stated after a few months she had a friend look at the machine and they determined that it was the lid lock switch which was broken. The tenant stated she was able to purchase the part for

\$39.20, and seeks to recover the cost of the repair. Filed in evidence is a copy of the invoice.

The tenant testified that while the machine was broken she had the use of a washing machine in the basement, but the landlord told her she was not allowed to use it because it was for the other tenants. The tenant stated she had to go elsewhere to use a washing machine for a period of time.

Items 22- 24

Item 22 – The tenant testified the landlord has not removed the screws and picture hooks from the walls or done the general wall repair that was agreed to in the move-in condition inspection report.

Item 23 - The tenant testified that the curtain hook damage to the wall in the kitchen that was repaired with drywall mud has never been painted and the white mud on the red paint is unsightly, the tenant stated she has purchased paint to match the wall and seeks to be compensated for the paint and supplies in the amount of \$82.00.

Item 24 - The tenant testified the landlord was also required to paint all the window sills and trim in the rental unit repair, which was also agreed to in the move-in condition inspection report and that work has not been completed. The tenant stated she has purchased the trim paint, however, they have not been painted.

The landlord testified that removing the nail and repairing the walls and painting the trim is merely cosmetic and they are not required to make the repair.

The landlord agreed if the work is required to be done then she would agree to reimburse the tenant for the trim paint and some of the cost of supplies. The landlord does not agree to pay for any paint for the red wall.

Item 25

The tenant testified the tub sprayer has been broken since she took possession of the unit. The tenant stated that the property manager attended the unit and started to remove the grout from the tile in order to replace the sprayer, however, he never came back to make the repair. The tenant stated she was able to attach a showerhead to the sprayer, however, that only worked temporarily. The tenant seeks to compensation for loss of use for five months Dec – Jan and Oct - Jan at the rate of \$10.00 per month.

The landlord testified that the tub and the faucet are fully functional and the sprayer does not have any impact on the use of the facility.

Items 26 – 27

The tenant testified that the plate on the kitchen faucet moves from side to side and believes it is from rotten wood underneath the countertop and both need to be replaced. The tenant stated the faucet also sprays out water making a mess and she has to clean up the water, the tenant seeks aggravated damages and loss of use.

The tenant writes in her email dated October 07, 201, “the kitchen faucet has been an issue from February until now. It was replaced in June, broke again and was replaced with another (used) fixture at the end of August. The tap is still not perfect however, as the faucet plate moves from side to side when the faucet arm is swivelled from the left sink to the right sink etc.”

[Reproduced as written]

The landlord testified that the faucet was fixed. The landlord stated they tried to make arrangements to inspect the unit and this was one of those items to inspect. However, the tenant was not available and suggested that they should not enter when their dog is alone in the unit. The landlord stated a new time has not been arranged.

Item 28

The tenant testified that when she took possession of the basement suite. The landlord agreed that they would replace the blinds in the basement unit, repair the kitchen faucet and caulk the bathtub. The tenant stated the landlord has not done any of the work agreed upon.

The landlord testified the kitchen faucet was repaired.

At the end of the hearing both parties were required to provide a copy of the condition inspection report. However, the only copy received was from the tenant.

Item 29

The tenant testified that the property manager fixed the toilet, however, it keeps running periodically and the sound of the running toilet is annoying the tenant below and he keeps coming up to her unit and banging on the door wanting us to jiggle the toilet handle. The tenant stated it would be hard to isolate the problem as this is not constant and only happens a couple of times a week. The tenant seeks loss of use for twelve months at the rate of \$30.00 per month.

The tenant testified that she seek to be compensated aggravated damages, due to the tenant downstairs being annoyed and bothering her.

The landlord testified that the toilet has been fully functional and there is no loss of use. The landlord stated that they fixed the running toilet and were not notified by the tenant

that there were any further issues. The landlord stated the tenant below has never made any complaints to them regarding hearing the sound of a running toilet.

The landlord stated she would send the property manager to see if they can isolate the problem.

Item 30

The tenant testified that the landlord has breached her rights to quiet enjoyment, by not performing regular repairs that were requested. The tenant stated the landlord has been lashing out at her since she testified against the landlord at a different hearing.

Item 31

The tenant testifies that she seeks aggravated damages for items # 8, 12, 13, 21, 25, 26, and 29 as described above. The tenant stated she especially wanted aggravated damages for the downstairs tenant banging on her door and bothering her about the running toilet.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

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.

Under section 32 (1) of the Act, a landlord must 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 to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Item A

In this case, the parties entered into a tenancy agreement on December 21, 2011, and on February 21, 2012, the parties amended the tenancy agreement to include a one bedroom suite, and the tenant was given permission to sublease the basement suite under her tenancy agreement.

The tenant had the basement suite incorporated into her tenancy agreement in order for her to sublease to a friend. The fact the sublease did not work out is not the landlord's responsibility. I find there is no provision under the Act that would give me the authority to cancel a tenancy agreement, when there is no breach of the Act. Therefore, this portion of the tenant's claim is dismissed without leave to reapply.

Items 1 to 2

The tenant withdrew this portion of their claim. Therefore, items 1 and 2 are dismissed without leave to reapply.

Items 3 to 7

Item 3 – The knob on the dimmer switch is missing, however, the switch is fully functional and knob is merely cosmetic, and was missing when the tenant took possession of the unit. The tenant has submitted no evidence there is any health or safety issues.

Item 4 - The electrical wires in the living room were installed when the house was built for the purpose of installing a surround sound system for attaching speakers to the walls. These were in place when the tenant took possession of the rental unit and it is unreasonable that the tenant would seek to have them removed or have the landlord perform work merely for cosmetic purpose to satisfy the tenant.

Item 5 and 6 – the electrical wire under the kitchen is meant for valance lighting, which was never installed, and the wire does not impose any health or safety risk. Further, the tenant is seeking to have the lighting that was installed repaired, however, that lighting has not worked since the home was built and appears to merely decorative.

Item 7 – the screen door was not in place at the start of the tenancy and is not a health or safety issue.

In this case, the tenant is requesting repairs for items 3 to 7. The tenant has submitted no evidence that items impose any health or safety issues. Therefore, this portion of the tenants claim is dismissed without leave to reapply.

Item 8

In this case, I find the tenant's testimony to be conflicting and lacking credibility as the tenant writes in their application that the heat has been unevenly distributed throughout the rental unit and testified to that on a previous hearing date. Further on page 109 of the tenants submission states "some bedrooms are very cold while others are warm".

However, the tenant changed her testimony claiming to have no heat since the start of tenancy in January 2012. I do not accept the evidence of the tenant, as it would be highly unlikely that you would be able to live with no heat for two consecutive winters in the province of British Columbia. I also, note the tenant was paying utilities for this service. Therefore, this portion of the tenants claim is dismissed without leave to reapply.

Item 9

In this case, the tenant did not notify the landlord that there was an issue with the master bathroom drawer. The landlord has agreed to inspect the drawer. As a result of the tenant not notifying the landlord as required by the Act, I decline to make an order for repair. Therefore, this portion of the tenants claim is dismissed with leave to reapply.

Item 10

In this case, the testimony of the tenant and the photographic evidence support those areas of the carpet are fraying. There was no evidence presented by the tenant that would indicate the carpets are a health and safety risk. Therefore, I dismiss this portion of the tenants claim without leave to reapply.

However, the landlord has agreed to have someone look at the fraying and if necessary attempt to have the fraying minimized to maximize the useful life of the carpet.

Item 11

In this case, I accept the evidence of the landlord that the electrician has inspected the lighting and is waiting for a part to arrive and that the light will be fixed within the next while. As a result, I decline to make any further orders.

Item 12

In this case, the evidence supports the backstairs needed to be replaced and the landlord agreed at the previous hearing that the stairs would be replaced by February 14, 2013. The stairs were not replaced.

The evidence of the landlord was that part of the delay was the tenant was interfering and the contractor no longer was willing to do the job as he felt too many people are involved. The landlord stated they have hired a new contractor. The tenant denied interfering with the contractor and landlord, and there was no documentary evidence to support the landlord's position.

I order the landlord to have the backstairs replaced **immediately**.

If the repair to the backstairs was not completed by April 1, 2013, the tenant is entitled to a rent reduction of \$50.00 per month, until such time as the repair to the backstairs is made.

The tenant is also claiming for loss of use for eleven months, however, I find that the tenant had a duty to mitigate the loss by taking reasonable steps, such as applying for dispute resolution if the stairs were in such poor condition that they were unsafe.

I find by delaying their application and standing idly by for a period of eleven months, the tenant failed to take reasonable steps to minimize the loss of use, as this could have been avoided by filing for dispute resolution within a reasonable amount of time.

However, the landlord was required to fix the stairs by February 14, 2013. I find the tenant is entitled to loss of use from the date the stairs were required to be repaired. Therefore, I grant the tenant's compensation for the month of February and March 2013, in the amount of **\$100.00**.

Item 13

In this case, the tenant provided no testimony or documentary evidence as to the loss of use of the backyard. One gate to the backyard was hard to open and the landlord had agreed to fix the gate at the same time as stairs, and there was also a secondary gate to access.

I find the tenant has provided insufficient evidence to support this portion of their claim for the loss of use of a backyard. Therefore, this portion of the claim is dismissed.

Item 14

In this case, one small shelf fell off the wall in the pink room. The evidence of the tenant was that it was not fastened to the stud correctly and fell off the wall. The evidence of

the landlord was that she believed the shelf fell off the wall due to the tenant being neglectful, but also admits it is possible for a shelf to fall from normal wear and tear. It is just as likely as not that the shelf fell due to normal wear and tear.

I order the landlord to reinstall the shelf in the pink room by **May 31, 2013**.

Item 15 - 16

In this case, a large shelf fell off the wall in the master bedroom, the shelving unit was located on a wall that is not supported by studs as a pocket door slides behind the wall.

When the shelf fell off the wall the tenant notified the landlord and this was inspected by the property manager. The evidence of the tenant was the property manager agreed to make the repair and then later was informed by the landlord that they determined the damage was caused by the tenant placing items that were too heavy for the shelving unit.

The property manager did not attend the hearing to provide testimony as to how they determined it to be tenant damage. The invoice submitted indicates the wall needed reinforcement to prevent further collapse and it cost \$75.00 for the work performed. Therefore, I grant the tenant compensation for making the repair to the master bedroom closet in the amount of **\$75.00**.

The tenant is also claiming for loss of use for seven months, however, the tenant was fully aware after the shelving unit fell off the wall that the landlord was not prepared to make the repair, as the landlord believed the damage was due to the tenant's neglect.

I find at that point the tenant had a duty to mitigate the loss by taking reasonable steps, such as applying for dispute resolution to determine who was responsible to make the repair.

I further find that by delaying their application and standing idly by for a period of seven months, the tenant failed to take reasonable steps to minimize the loss of use, as this could have been avoided by filing for dispute resolution within a reasonable amount of time. Therefore, I dismiss the tenant's claim for loss of use of the shelving.

Item 17

In this case, the landlord did not send the property manager to inspect the casing on the french door to see if that a portion of the moulding was missing as claimed by the tenant. As a result, I accept the evidence of the tenant that the moulding was missing and the glass fell from the frame under normal use. The evidence of the tenant was the repair cost \$14.11, and is supported by an invoice. Therefore, the tenant is entitled to recover the cost of the repair in the amount of **\$14.11**.

In this case, the tenant is seeking loss of use for a period of two and a half months at the rate of \$20.00. The evidence of the tenant was the door was use to keep the noise out and the draft out. The evidence of the landlord was that she lived in the unit and there is no draft and that the door is merely decorative. As both versions are probable, I find without further evidence the tenant has not met the onus to prove their claim and the claim fails. Therefore, I dismiss the portion of the claim for loss of use.

Item 18 – garage door

In this case, the tenant has not provided any proof that there was the loss of use of a garage door. The tenant did not notify the landlord a problem existed. Therefore, I dismiss this portion of the tenant's claim without leave to reapply.

Items 19 - 20

In this case, one of the clips at the back of the toilet was broken. The landlord did not inspection the clip and there was no evidence from the landlord as to how they determined the clip was broken by the tenant being neglectful. As a result, I accept the evidence of the tenant that the clip was broken under normal use. Therefore, the tenant is entitled to recover the replacement cost of the toilet seat in the amount of **\$35.00**.

The tenant is also claiming for loss of use for the period of October to January. However, when questioned why the toilet would be unusable when only one clip was broken on the toilet seat the tenant was not able to provide an appropriate response. As a result, I find the tenant's credibility lacking on this issue. Therefore, I dismiss this portion of the tenant's claim for loss of use.

Item 21

In this case, the property manager attended and inspected the washing machine and determined it was broken due to the tenant overloading the machine. However, the landlord did not have a qualified person make the determination and upon a friend of the tenant looking at the machine, it was determined that is was the lid lock mechanism that was broken. I find the landlord has failed to prove that this mechanism was broken by the tenant being neglectful.

The tenant seeks compensation for the repair of the machine in the amount of \$39.20. However, in an email dated September 21, 2012, the tenant agreed to cover the cost of the repair as the landlord had allowed her to pay a lesser amount of rent that month. Therefore, I dismiss this portion of the tenants claim.

The tenant is also claiming for loss of use, as the tenant took reasonable steps to minimize the loss of use by having the machine repaired within a reasonable amount of time. I find the tenant is entitled to compensation at the rate of \$50.00 for the three months. Therefore, I grant compensation for loss of the washing machine in the amount of **\$150.00**.

Item 22- 24

In this case, at the start of the tenancy the landlord agreed in the move-in condition inspection report to remove all the nails throughout the house and for general wall repair. The report also stated all the window sills and trim would be painted. As a result of that agreement the landlord is obligated to make the repairs that were negotiated at the start of tenancy.

I order the landlord to remove all the nails that are not being used throughout the house and complete general wall repairs, including painting the drywall mud around the curtain hooks in the kitchen. The landlord is also required to paint all window sills and trims. These repairs are to be completed **by May 31, 2013**.

The tenant has purchased paint and supplies. The tenant did not have the landlord consent to purchase the paint or supplies, however, the landlord has agreed to purchase the trim paint and some supplies from the tenant.

The tenant has also purchase red paint to match the wall in the kitchen, although the landlord does not agree to purchase the red paint from the tenant. While I find it would be reasonable for the landlord to use the paint and provide the tenant with some compensation, the tenant did not have the landlord's consent to purchase the paint. As a result, the landlord has the choice of either buying the paint from the tenant or purchasing their own paint.

Item 25

The evidence of the tenant was the tub sprayer has been broken since she took possession of the unit. The evidence of the landlord was that the tub and the faucet are fully functional and the sprayer does not have any impact on the use of the facility.

However, in the move-in condition inspection report, it indicated the sprayer needed to be replaced. It did not specify it would be done at the start of the tenancy.

While the sprayer is not required to be completed under section 32 of the Act, as there was no evidence of a health and safety issue, I find this item was negotiated for repairs at the start of the tenancy and the landlord is obligated to comply with that agreement.

I order the landlord to make the repair to the tub sprayer **by May 31, 2013**.

Should the tiles need to be removed, the landlord is obligated to reattach the tiles and y grout the tiles.

Should the tiles not be required to be removed, the landlord is required to fill the grout that was previously removed by the property manager.

The tenant claimed for loss of use, however, the tenant was aware at the start of the tenancy that the landlord was not going to make the negotiated repair. I find at that point the tenant had a duty to mitigate the loss by taking reasonable steps, such as applying for dispute resolution to have the negotiated repair made.

I find by delaying their application, the tenant failed to take reasonable steps to minimize the loss of use, as this could have been avoided by filing for dispute resolution within a reasonable amount of time. Therefore, I dismiss the tenant's claim for loss of use of the sprayer.

Items 26 – 27

In this case, the evidence of the tenant was the faucet in the kitchen and wood below the faucet need to be replaced. The evidence of the landlord was the faucet was replaced and they were going to inspect the tenant's claim for rotten wood, however, that was delayed by the tenant.

As both side have provided a different version of events and both are versions are probable. However, without further evidence from the tenant, such as any photographs of the faucet or of the rotten wood, I find the tenant has provided insufficient evidence to prove her claim. Therefore, this portion of the tenants claim is dismissed.

Item 28

In this case, the only copy of the move-in inspection report received for the basement unit was from the tenant. In the move-in condition inspection report the landlord agreed that they would replace the blinds that were damaged in the basement unit, repair the kitchen faucet and caulk the bathtub. The evidence of the landlord was the faucet was fixed.

While the blinds and the caulking are not necessarily required to be completed under section 32 of the Act, as there was no evidence of a health and safety issue, I find these were items negotiated for repairs at the start of the tenancy and the landlord is obligated to comply with the agreement.

I order the landlord to replace the blinds that are damaged in the lower unit and caulk the tub by **May 31, 2013**.

The tenant has provided insufficient evidence to prove the kitchen faucet was not repaired. Therefore, this portion of the tenant's claim is dismissed.

Item 29

The evidence of the tenant was that the property manager fixed the toilet, however, it keeps running periodically and the sound of the running toilet is annoying the tenant below and he keeps coming up and bothering her. The evidence of the landlords was

the toilet was repaired and they received no further complaint. The landlord's evidence was the other tenant has never sent in any complaint regarding hearing the toilet run.

In this case, the tenant seeks loss of use of the toilet for twelve months at the rate of \$30.00 per month. There was no evidence submitted by the tenant and I find it highly unlikely that the toilet was unusable for this duration of time. Therefore, this portion of the tenant's claim is dismissed without leave to reapply.

Item 30

The evidence of the tenant was that she seeks compensation in the amount of \$1,650.00 for loss of quiet enjoyment. The tenant stated the landlord has been lashing out at her since she testified against her in a previous hearing. The tenant stated the landlord has failed to do regular maintenance and repairs and has falsely suggested that they are tenant damage.

At common law, the covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy.

The Legislation establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy,
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

In this case, the tenant claims that the failure of the landlord to make repairs this has resulted in the loss of quiet enjoyment. However, I find the tenant has failed to prove the landlord seriously interfered with their tenancy.

In this circumstance, the parties disagreed on who was responsible for the repairs. I find if the tenant did not agree with the landlord's position, it was their responsibility to bring the matter for dispute resolution with a reasonable time frame.

Even if I accept the position of the tenant that the landlord purposely was not making repairs, which I do not, I have found a large amount of the repairs requested by the tenant are not required to be made by the landlord as there is no health or safety issue.

This would still not meet the requirement of loss of quiet enjoyment as the tenant had exclusive possession, reasonable privacy and was not unreasonable disturbed. As a

result, I find the tenants claim for compensation for loss of quiet enjoyment unreasonable. Therefore, I dismiss this portion of the claim without leave to reapply.

Items 31

The tenant is further claiming for aggravated damages in the amount of \$834.00 relating to items # 8, 12, 13, 21, 25, 26, and 29.

I find that there was insufficient and no medical evidence to support that the landlord caused the tenant to suffer any physical, psychological or psychiatric harm which significantly affected her life, as a result of the landlord not making repairs to the above items.

As stated above, the parties disagreed on who was responsible for the repairs. I find if the tenant did not agree with the landlord position, it was their responsibility to bring the matter for dispute resolution within a reasonable time. I find the tenant's claim for compensation for aggravated damages is unreasonable. Therefore, I dismiss this portion of the claim.

Cautions

1. The landlord is required to provide the tenant with 24 hours notice as required by the Act, to make the above repairs. The tenant is to ensure their dog is in an area that will not interfere with the landlord's rights and orders to complete the repairs. The tenant is not required to be present during the repairs and if present she is not to interfere with the work being completed or workers.
2. The landlord is cautioned when completing a move-in condition inspection report and agreeing to make repairs at the start of the tenancy that this is a binding contract, regardless, if they are health and safety issues or not, as those repairs were negotiated as part of the contract.
3. The tenant is cautioned that under section 7(2) of the Act, she must do whatever is reasonable to minimize damage or loss when seeking compensation and allowing a claim to build is not considered taking reasonable steps.
4. The tenant is cautioned that unless there is a health or safety concern or that it was a negotiated term of the tenancy that the landlord is not required to make repairs for cosmetic purposes and filing an application to have cosmetic repairs completed, such as the dimmer knob, may be an abuse of the dispute resolution process.

As a result of the above, and pursuant to section 67 of the Act, I find that the tenant has established a total monetary claim of **\$374.11**, comprised of the above described amounts.

As the tenant has been largely unsuccessful with their application, the tenant is awarded a portion of the filing fee in the amount the **\$50.00**.

The tenant is entitled to deduct the total monetary order awarded of **\$424.11**, from May 2013, rent.

Conclusion

I order the landlord to have the backstairs replaced immediately. The tenant is entitled to a rent reduction of \$50.00 per month, commencing April 1, 2013, if the stairs were not repaired by April 1, 2013.

I order the landlord to make the above described repairs for items #14, 22, 23, 24, 25 and 28 by May 31, 2013.

The tenant is granted a monetary order in the above amount and is authorized to deduct this amount from May 2013, rent.

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: March 21, 2013

Residential Tenancy Branch

