



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, OLC, ERP, RP, PSF, RR

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss - Section 67;
2. An Order for the return of the security deposit – Section 38;
3. An Order compelling the Landlord to comply with the Act - Section 62;
4. An Order for the Landlord to make emergency and other repairs to the unit – Section 32;
5. An Order compelling the Landlord to provide services required by law – Section 65; and
6. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to repairs, services or the Landlord’s compliance?

Is the Tenant entitled to return of the security deposit?

### Background and Evidence

The tenancy started on November 1, 2012 for a fixed term to November 1, 2013. Rent of \$1,250.00 is payable monthly. No move-in inspection was done. The unit is occupied by the Tenant and two children. The upper floor has two bedrooms and the basement floor has one bedroom and a television room.

The Tenant states that repairs to the unit have been necessary since the onset of the tenancy and while the Landlord has made some repairs, these have been slow and many items remain. The Tenant set out a list of repairs remaining and the Landlord agreed to make these repairs by June 30, 2013 as follows:

1. The carpet in the basement will be cleaned to remove stains and odors. Should the stains and smells not be removed, the Tenant has leave to reapply for compensation and for the replacement of the carpet;
2. The back door will be repaired to close the gaps in the wood surrounding the lock mechanism;
3. Ceiling tiles in the basement will be installed;
4. Garbage outside the unit will be removed;
5. A plumbing vent in the laundry room will be installed;
6. A secure cover will be placed over the electrical panel;
7. Exposed insulation in the basement will be covered;
8. The furnace will be inspected by a qualified furnace repair person and any recommendations in relation to a fresh air vent and cleaning will be followed and completed;
9. The crawlspace under the porch will be cleaned, deodorized and sealed and the cracks in the room above this area will be repaired;
10. The drywall in the laundry room will be repaired;
11. Gaps around the dining room window will be sealed;
12. The dishwasher will be replaced.

The Tenant agrees to be as flexible as possible to accommodate the repair schedule.

The Tenant states that while she is happy the repairs and timeline have been agreed to but wishes to end the tenancy. The Landlord states that he is not prepared to agree to an end to the tenancy.

The Tenant states that as a result of the slow and sporadic repairs to the unit, the Tenant has lost enjoyment of the unit, in particular the basement area where her son used to sleep. The Tenant states that after a short time her son could no longer tolerate the smell and had to sleep upstairs. The Tenant sets losses and correlated amounts claimed in relation to, inter alia, the loss of a dishwasher, incomplete repairs, Tenant labour costs to make some repairs, loss of use of the basement area and loss of times and expenses in preparing the dispute. The quantum of the Tenant's monetary claim is \$5,000.00.

The Landlord states that a new dishwasher was purchased for the unit near the beginning of the tenancy but that the Tenant did not want it. The Tenant states that there was nothing wrong with the old dishwasher that could not have been repaired. The Landlord states that the Tenant is making an unreasonably high claim for compensation, that repairs have been made during the tenancy, that the Tenant is always coming up with more repairs, and that repairs will continue to be made as agreed to but that the Tenant will continue to find more problems.

### Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the agreement of the Landlord to complete the repairs requested by the Tenant, I make no

order for repairs or for the provision of services or facilities or compliance with the Act however should the Landlord fail to make the repairs as agreed, I give the Tenant leave to reapply. Accepting that the Landlord offered the Tenant a new dishwasher and the Tenant refused this offer, I find that the Tenant cannot now ask for compensation for the loss of a dishwasher and I dismiss the claim for compensation for this item. As the Act does not provide for recovery of any costs related to the dispute process other than in relation to the filing fee, I dismiss the Tenant's claim for costs to prepare for the dispute. As no evidence was provided indicating that the Tenant was asked by the Landlord to make repairs, I dismiss the Tenant's claim for work done on the unit. Given the undisputed evidence of the Tenant that use of the basement was lost due to incomplete repairs and the carpet, I find that the Tenant has substantiated the loss claimed of **\$800.00**. I further find that this amount adequately and reasonably compensates the Tenant for her overall losses in relation to incomplete repairs to the unit since the onset of the tenancy and I dismiss the Tenant's remaining monetary claims. I order the Tenant to deduct this amount from rent payable for August 2013.

As the tenancy has not ended, I find that the Tenant has prematurely made the claim for return of the security deposit and I dismiss this claim with leave to reapply after the tenancy has ended.

### Conclusion

I order the Tenant to deduct \$800.00 from rent payable for August 2013 in full satisfaction of the claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 2, 2013

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Residential Tenancy Branch

