



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, ERP, RP, PSF, LRE

### 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 for the Landlord to make emergency or other repairs – Section 32;
4. An Order compelling the Landlord to provide services required by law – Section 65; and
5. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70.

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

### Preliminary Matter

At the onset of the Hearing the Tenant confirmed that the tenancy has not ended and withdrew its claim for return of the security deposit. The Tenant also clarified that the claim for the provision of services is in relation to the claim for repairs and is not a separate claim.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to emergency or other repairs?

Is the Tenant entitled to conditions on the Landlord's right to enter the unit?

Background and Evidence

The following are agreed facts: The tenancy started on November 1, 2012. Rent of \$950.00 is payable monthly on the first day of each month. At the onset of the tenancy the Landlord collected \$475.00 in cash as a security deposit.

The Tenant states that in January 2013 the chimney for one of two wood stoves fell over and that although the Landlords were informed on January 14, 2013, they refused to repair the chimney. The Tenant states that the Landlord lives across the road and can see the chimney. The Tenant states that the stove connected to the chimney cannot be used and that neither of the wood stoves have fire guards. The Tenant claims an order for the repair of the chimney. The Tenant states that as a result of the failure of the Landlord's, the Tenant incurred costs for heat and claims \$700.00 in compensation for both the loss of the wood stove and the heating costs. No invoice was provided for the cost of the heat.

The Landlords state that the chimney is only slanted and that it still works and is up to code. The Landlord states that the Tenant has been using the wood stove despite the chimney. The Landlord states that they know the chimney is up to code as they had a home inspection done in 2011 and it was up to code then. The Landlord states that the chimney has not been checked since then and that they had planned to work on this with the Tenant but now will not make any repairs until after the tenancy ends. The Landlord states that the Tenant has not paid rent for two months and will be seeking the Tenant's eviction. The Landlord states that since the Tenant has not paid rent, they do not have any funds for the repairs.

The Tenant states that there are five leaks coming from the roof since January or February 2013 and that the leaks became worse with the spring. The Tenant states that the Landlord was told immediately about the roof but that they refused to fix it. The Landlords state that there are only two leaks and that nothing has been done to repair

the leaks as they have not been able to get there and that there is no way to fix the leaks.

The Tenant states that wasps started falling down from the ceiling in January 2013 and that although the Landlord was immediately informed, nothing was done. The Landlord states that the wasps have been there for previous tenancies and that the problem only occurs for a month. The Landlord states that they did try to get rid of them previously but were unable to rid the unit of the wasps. The Landlord states that they have not called in professional help as they do not want any poisonous spray used and that the Tenant would have to be out of the unit for a period of time if they did use such spray.

The Tenant states that all of the cupboards are falling off and that the hinges are broken. The Tenant states that the cupboards were in this shape at move-in and the Landlord has said they would not make any repairs to the unit. The Landlord states that the previous tenants trashed the unit and that the Landlord has no intention of making any repairs during this tenancy as they have an interested buyer for the property.

At this point in the hearing the Landlord became angry and used foul language. The Landlord was given a five minute break to collect herself and was warned about the use of such language during the hearing. It should be noted that following this break the Landlord had to be warned several times during the hearing for interrupting the proceedings and making loud noises during the Tenant's provision of evidence.

The Tenant states that the carpet is over 15 years old and is heavily stained, with a soaked underlay. The Tenant states that he started removing the carpet with the Landlord's permission but seeks an order for the remaining removal to be completed by the Landlord and for a floor finishing to be put in its place. The Landlord states that the carpets are about 10 years old and agrees there are stains but states they will not repair the carpets as they were cleaned and are safe.

The Tenant states that the Landlord comes to the house and yard without permission or notice and has refused on one occasion to leave the yard forcing the Tenant to remove himself into the unit. The Landlord states that they have never been to the unit uninvited and that a provision in the tenancy agreement gives them access anytime to a shipping container stored at the unit. The Landlord was unable to point out this provision in the tenancy agreement.

The Tenant states that the Landlord told the Tenant that the shipping container would be removed in the spring, that the container held three atvs and that the Landlord only removed the atvs. The Landlord states that they are not prepared to move the shipping container and that section 10 of the Act allows them to come on the property at any time.

The Tenant states that at move-in the previous tenant's garbage was still in the unit and the Tenants asked the Landlord to remove the garbage. The Tenant states that the Tenant collected the garbage from under the house and around the yard to one spot for the Landlord to remove but that the Landlord has failed to remove the garbage. The Tenant asks that the Landlord be ordered to remove the garbage and claims \$900.00 for his approximate 45 hours spent on gathering the garbage at a rate of \$20.00 per hour. The Landlord states that three truck loads of garbage have been removed but that as the pile kept growing and as the Tenant stopped paying rent they had no funds to remove the rest. The Landlord also states that the Tenant collected the garbage in exchange for a \$50.00 reduction in rent as provided in the tenancy agreement.

The Tenant states that with the permission of the Landlord, who also supplied him with a chain saw, the Tenant pruned the trees in the yard starting in April 2012, gathering and using the wood in the one wood stove. The Tenant claims \$350.00 for this work. The Landlord states that the Tenant did not ask for permission but did this work on his own initiative.

The Tenant states that the unit was filthy at move-in but the Landlord refused to clean the unit or provide supplies for the cleaning of the unit. The Tenant states that the unit was cleaned by the Tenants and claims \$200.00 in compensation. The Landlord states that the unit was being cleaned by the Landlord after the previous tenancy but that the Tenant needed a unit immediately so the Landlord stopped the cleaning in order for the Tenant to move into the unit. The Landlord states that only the cleaning of the floors was left to complete and the Tenants agreed to complete this cleaning.

The Tenant states that the Landlord forced him to accept a roommate for the month of June 2013 and that this made him very uncomfortable so he sent the Landlord a letter explaining his discomfort. The Tenant states that the Landlord reduced the rent for this month with the Tenant paying \$550.00 for the month. The Tenant claims \$450.00 for having been made to take this roommate. The Landlord states that the choice of taking the roommate was the Tenant's choice and that she introduced the two. The Landlord states that the two agreed to be roommates. The Landlord states that when she received the Tenant's letter about not wanting to take this person as a roommate, she apologized to the Tenant but that she was only trying to help the Tenant.

The Tenant states that the unit's yard had an unused garden that the Tenant turned by hand and planted. The Tenant states that he uses the garden produce. The Tenant states that the Landlord requested that the Tenant remove rocks from the flower bed. The Tenant claims \$300.00 for the maintenance of the garden and flower bed. The Landlord states that the Tenant was never asked to do anything with the flower bed.

### Analysis

Section 32 of the Act provides that 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. Further, the landlord's obligations in relation to the health, safety and housing standards apply whether or not a

tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 of the Act provides that emergency repairs are 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.

Based on the undisputed evidence that the roof has leaks, I order the Landlord to repair the roof no later than two weeks from receipt of this decision. Based on the undisputed evidence of the parties that wasps are seasonally present in the unit, I order the Landlord to employ the services of a pest control business to rid the unit of wasps no later than two weeks from receipt of this decision. Based on the undisputed evidence that the cupboards are damaged, I order the Landlord to repair the cupboards to ensure that the cupboards and doors are securely attached.

The Residential Tenancy Branch provides a guideline for the useful life of building elements. This guideline indicates that the useful life of a carpet is 10 years. Based on the undisputed evidence of the Landlord that the carpets are 10 years old and stained, I find that the Tenant is entitled to the replacement of the carpet. I therefore order the

Landlord to remove the carpet and any underlay and to replace the carpet with either another carpet or alternative flooring.

Based on the undisputed evidence of the Landlord, I find that the chimney is at least slanted and would possibly create a fire hazard if used. However given the Landlord's assertion that the chimney was inspected and found to be safe in 2011, I order the Landlord to have a professional inspection of the chimney done no later than two weeks from the receipt of this decision and to immediately provide the Tenant with a report indicating its safety. If the chimney is not found to be safe, I order the Landlord to repair the chimney no later than October 31, 2013. Based on the undisputed evidence of the Landlord that garbage remains from a previous tenancy, I order the Landlord to remove all remaining garbage from the unit or property no later than two weeks from receipt of this decision.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. 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.

As the Tenant did not provide any invoices in relation to heating costs, I find that the Tenant has failed to establish the costs claimed for heating and I dismiss this claim. Although it is undisputed that the Tenant gathered garbage for the Landlord to remove and considering the Landlord's evidence that three truck loads have been removed so far, but considering that there is no evidence such as photos to indicate the original quantity of the garbage, and considering the Landlord's undisputed evidence that the Tenant was provided with a \$50.00 rent reduction, I find that the amount claimed by the Tenant is excessive and that the Tenant is entitled to a reduced amount of **\$250.00**.

This amount is calculated based on an average of 5 hours work per truck load at \$20.00 per hour and takes into account the \$50.00 already provided from the Landlord.

Given the Tenant's evidence that the trees cut by the Tenant were used as firewood, I find that the Tenant benefitted from this work and that the Tenant has therefore not established the costs claimed for this work. I dismiss this claim.

Based on the undisputed evidence that the Landlord agreed to remove the shipping container but has failed to do so, I find that the Tenant is entitled to its removal and I order the Landlord to remove the container no later than two weeks from receipt of this decision.

Given the Landlord's evidence of cleaning left for the Tenant at the beginning of the tenancy and considering that the Tenant has provided no additional evidence such as photos indicating the state of the unit at move-in, I find that the Tenant has substantiated a reasonable amount of **\$50.00** for cleaning the unit.

Accepting the Landlord's evidence that the decision to accept the roommate was the Tenant's decision and considering the Tenant's evidence that when he objected to the roommate this person left the unit, I find that the Tenant has not substantiated that the Tenant was forced to accommodate this person and I dismiss the claim for compensation in relation to having this roommate. I further note that even if the Tenant was forced to accept a roommate, the Tenant has not shown that this action caused him any loss given the rent provided for this roommate.

Although the Tenant claims compensation for working up and planting the garden, as this was done for his own benefit I find that the Tenant has not established any loss. Further, given the Landlord's denial of request for the removal of rocks from the flower bed, I find on a balance of probabilities that the Tenant has not established any agreement to be compensated for such activity. I therefore dismiss the Tenant's claim for compensation in relation to the garden and flower bed.



Section 29 of the Act provides as follows in relation to a landlord's right of access to a rental unit:

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As there is nothing in the tenancy agreement that provides for the Landlord's access to the unit for any reason, I order the Landlord to adhere to the requirements of the Act as set out above. Should the Landlord fail to adhere to the Act, I give the Tenant leave to reapply compensation and for further limits on the Landlord's right of entry.

Should the Landlord fail to carry out the repairs set out above, I give the Tenant leave to reapply for compensation.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$300.00**. If necessary, this order may be filed in the Small Claims Court and 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: September 4, 2013

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Residential Tenancy Branch