



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes      CNR, CNC, LAT, RR, FF, MND, MNDC, MNR, MNSD, OPR/OPC

### Introduction

This hearing was reconvened from the original hearing held on December 4, 2013 in response to an application by the Landlord and Tenant under the *Residential Tenancy Act* (the “Act”). By Interim Decision, dated December 9, 2013, it was determined that the remaining claims to be heard at this reconvened hearing were those of the Landlord's as follows:

1. A Monetary Order for damages to the unit – Section 67;
2. A Monetary Order for compensation – Section 67; and
3. An Order for the recovery of the filing fee – Section 72.

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

### Preliminary Matters

At the onset of the hearing, the Landlord sought to amend the application to include claims in relation to matters that arose after the last hearing, including matters related to the end of the tenancy that occurred when the Tenant moved out of the unit on February 28, 2014. As accepting an amendment at the same time as the hearing is about to start would significantly prejudice the Tenant's ability to know and respond to the claims, I decline to allow the amendment.

The Landlord states that she provided 59 pages of evidence to the Residential Tenancy Branch and to the Tenant, including 26 pages of evidence that had been provided for a

clarification request and for which the Clarification Decision allowed the Landlord the opportunity to submit for this hearing. The Tenant confirms receiving this package but states that the package is noted to be in relation to a review consideration. A review of the evidence under the clarification request indicates that other than the Landlord's written submissions the evidence provided for the clarification is the same or similar evidence that was provided for the original hearing. As the Landlord has opportunity to provide oral evidence in relation to the matters at this hearing, and as no decision allowed the provision of materials as evidence from the review decision, I find that there is no other evidence to be considered at this reconvened hearing other than the oral evidence of the Landlord.

#### Issue(s) to be Decided

Is the Landlord entitled to the amounts claimed?

Is the landlord entitled to recovery of the filing fee?

#### Background and Evidence

The Landlord states that the Tenant disturbed the Landlord between 1:00 am and 5:00 am causing the police to attend at some time past 3:00 am and that the Landlord missed the following day of work due to the Tenant's behavior. The Landlord claims \$440.00. The Landlord provided an employment printout of the leave and a letter from her employer that the landlord was ill on October 12, 2014. The Landlord states that she does not wish the Tenant to know her hourly wage and that even if the Landlord did not lose any actual wages the Landlord still lost a future benefit. The Tenant states the Landlord has not proven that she missed work as a result of anything done by the Tenant and states that the Landlord has not shown any loss of income.

The Landlord states that the Tenant used an excessive amount of hydro by continuously leaving lights on in the unit. The Landlord provided graphs of the increased usage by the Tenant and costs to the Landlord. The Tenant states that only one light was left on while she was away at work so that the unit was not dark at night when she returned. The Tenant states that she did this for safety reasons. The Tenant

states that no other lights were purposely left on and that her use of the hydro was reasonable and provided for under the tenancy agreement.

The Landlord states that the Tenant caused a sump pump to be damaged by dropping articles such as toys, fleecy sheets and straws into the toilet. The Landlord states that this caused the motor to fail which burned out the electrical system causing the alarm to fail. The Landlord states that the Tenant was present while the sump pump was being repaired and apologized for causing the damage. The Landlord claims \$699.78. The Landlord provided a letterform the repair person that indicates the Landlord was charged \$624.80 "plus applicable taxes" for the repairs. The Landlord states that this amount was paid and claims \$699.78. It is noted that the letter provided by the repair person indicates that only Lysol wipes and bounce fabric sheets were found in the septic system and that "the alarm for the pump station was unplugged and not connected properly and that the Tenant indicated to the repair person that the Tenant unplugged the alarm as it made an annoying noise. The Tenant states that she does not use these products and that no other articles were present, only black sludge. The Tenant states that she only apologized for the mess.

The Landlord states that the parties agreed to share the costs of cable to the unit but that some time later, after the cable was installed and a box obtained, the Tenant decided not to have the cable. The Landlord states that the Tenant was asked to return the box but that this was not done for 4 months. The Landlord states that as a result the Landlord was charged \$72.13 for the cable and box. The Tenant states that she was never informed about any later payment charge for the box or for unreturned equipment and that this was returned to the Landlord at some unrecalled time.

The Landlord states that the remaining estimated costs being claimed are in relation to damages to the unit while the tenancy was ongoing. The tenancy agreement indicates that on November 1, 2011 the Landlord collected \$300.00 as a security deposit and \$175.00 as a pet deposit.

Analysis

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

Given that the Landlord did not provide any evidence of the value of the benefit provided for sick leave, I find that the Landlord has not substantiated the costs claimed and I dismiss this claim.

Given the undisputed evidence that the Tenant's cost for hydro is included in the rent, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant is responsible for any hydro costs and I dismiss this claim.

Given the repair person's letter indicating only wipes and sheets were on the sump pump and considering the Tenant's evidence of no other articles in the sump pump, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the sump pump to quit working. However considering the repair letter indicating that the Tenant disconnected the alarm, I find that the Landlord has substantiated that the Tenant contributed to the overall problem. As a result, I find that the Landlord is entitled to only a portion of the costs claimed. As the Landlord provided no evidence indicating the amount of taxes included in the charge for repairs and no evidence of the total payment of the Landlord, I find that the Landlord is entitled to half of the \$624.80 indicated in the repair letter. As no amount was provided for the tax, I decline to consider this additional amount in the entitlement of **\$312.40**.

Given the evidence of the Landlord about the late return of the cable box and considering the Tenant's evidence of no recall when the box was returned, I find the

Landlord's evidence more credible and I find that the Landlord has on a balance of probability substantiated that the Tenant caused the late return fee and is therefore entitled to **\$72.13**.

Given that the remaining estimated costs for additional damages to the unit were claimed before the tenancy ended, I dismiss these claims with leave to reapply. It is noted that the claims in relation to rental monies and damage to the car were dealt with in the Interim Decision.

As the Landlord's application has met with some success, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$434.53**. Deducting this amount from the combined security and pet deposit of **\$475.00** plus zero interest leaves **\$40.47**. I order the Landlord to return this remaining amount to the Tenant forthwith.

#### Conclusion

I Order the Landlord to retain \$434.53 from the security deposit plus interest in the amount of \$475.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$40.74**. 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: April 2, 2014

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Residential Tenancy Branch

