



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss, for an order requiring the landlord to comply with the Act, and for recovery of the filing fee.

The tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-At the beginning to the hearing, I explained that the landlord's three witnesses were unable to remain in the hearing until their testimony was needed. In that regard, witness SS, who was with the landlord, left the vicinity of the landlord during her testimony.

The other two witnesses, who were on separate telephone lines and were the property managers hired by the landlord, informed me of their telephones numbers in order that I could call them into the teleconference when needed. When that time came, neither witness answered their telephones.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation, an order requiring the landlord to comply with the Act, and to recover the filing fee?

Background and Evidence

The parties agreed there was a written tenancy agreement, although it was not provided into evidence. The parties agreed that the tenancy began on September 15, 2013, with the tenant moving in on September 14, 2013, monthly rent is \$1750, and the tenant paid a security deposit of \$875 at the beginning of the tenancy.

The tenant's monetary claim listed in his application is \$950, consisting of \$700 for cleaning, \$200 for having unclean blinds (\$50 per month), and the filing fee of \$50. At the hearing the tenant attempted to amend his application seeking an additional \$100.

The tenant's relevant documentary evidence included photographs of the rental unit showing the condition of which the tenant complained and a large amount of text message and email communication between the parties.

In support of his application, the tenant submitted that at the move-in inspection, which he conducted with a property manager, who I note is listed as witness NJ, he was rushed through the inspection due to NJ having another appointment shortly after the inspection began, causing the inspection to last approximately 15 minutes. Due to the rushed nature of the inspection, the tenant was not able to properly view the condition of the rental unit, according to the tenant.

Some issues noticed by the tenant were nails on the walls, paint stains, and laminate damage, which were noted on the move-in condition inspection report. I note that the condition inspection report was not provided into evidence.

The tenant submitted that he notified the landlord on September 20, that the rental unit was dirty and required a great deal of time and effort to bring the rental unit to a livable standard as required of a landlord at the beginning of the tenancy.

The tenant referred to his photographic evidence, which he submitted showed that the floor under the washing machine was filthy, that there were clothes behind the washing machine, hair and lint in the dryer, dog hair in the balcony sill, greasy floor, grime and mold in the bathroom, a dirty stove/oven, and dirty blinds, among other things.

The tenant submitted that the landlord promised, but continually failed to have the blinds clean until he filed his application for dispute resolution. The tenant contended that the blinds were so dirty, they had turned a grayish colour, and due to this, he is entitled to \$50 per month for a devaluation of the tenancy.

*Landlord's response-*

The landlord submitted that she hired the property manager to attend to the move-in inspection, and that the rental unit appeared clean to her, the landlord, after the last tenants moved out.

The landlord submitted that she had not intended to re-rent the rental unit for a couple of months as she wanted to make some repairs and renovations, which have now been performed. The landlord submitted that the tenant wanted to move in despite the need for renovations and repairs and that all issues listed in the condition inspection report were now addressed.

The landlord submitted that many of the issues the tenant complained of were remedied by the contractors during renovation and repair; additionally, the landlord submitted that she was advised by the contractor there was no point in cleaning the blinds until the work had been performed.

The landlord submitted that it was impossible to deal with all the tenant's text messages, as they numbered in the 100's.

The witness stated that he went in with the contractor and that all the deficiencies were attended to by the contractor.

The witness contended that the blinds were not white, so that the pictures would not show an accurate depiction.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the

claimant 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.

Section 32 of the *Act* states that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

Major repair issues, extermination problems and other issues with the rental unit may occur from time to time; however, such events do not automatically entitle a tenant to compensation. Rather, I find the tenant must demonstrate that the landlord was aware of the problem and was negligent in dealing with the problem which caused the tenant to suffer a loss of use of the rental unit or loss of quiet enjoyment of the unit. Negligence may include inadequate or an unreasonably delayed response to a known problem.

In the case before me, I could not consider the contents of the condition inspection report, as it was not before me; however, after a review of the photographs of the rental unit submitted by the tenant, I find that the photographs demonstrate that the rental unit was not of the standard required by the landlord at the beginning of the tenancy under section 32 of the Act. I additionally considered the landlord's statements that the rental unit required renovations and repairs at the beginning of the tenancy, which does confirm the tenant's submissions that the rental unit was dirty and required repair and cleaning. The landlord was not required to rent the rental unit if such was the case.

I also considered that the landlord agreed that the repairs and renovations took at least two months into the tenancy and that she was out of the country during December.

I also additionally find the tenant submitted sufficient evidence that the landlord had agreed to have the blinds clean, and failed to do so in a timely manner.

Due to the above, I find the tenant submitted sufficient evidence that the tenancy was devalued due to the condition of the rental unit and the landlord's failure to timely address the tenant's repair and cleaning requests.

While I do not accept that the tenancy was devalued by \$50 per month for unclean blinds or that the rental unit required the amount of hours to clean as submitted by the

tenant, after considering the photographic evidence of the tenant and the content of the text message communication, I find a reasonable amount to award the tenant for a devaluation of the tenancy is \$500.

I also award the tenant recovery of the filing fee of \$50.

The tenant did not pursue his request for an order requiring the landlord to comply with the Act, as the blinds have now been cleaned.

### Conclusion

The tenant's application has been granted in part.

I have granted the tenant a monetary award of \$550, comprised of \$500 for devaluation of the tenancy and recovery of the filing fee.

I direct the tenant to withhold the amount of \$550 from the next, or a future month's rent payment in satisfaction of his monetary award. The tenant should advise the landlord when the deduction is so made.

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* and is being mailed to both the applicant and the respondent.

Dated: May 03, 2014

---

Residential Tenancy Branch

