



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAP REIT INTERNATIONAL  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OLC, MNDC, RR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a money order for money owed or compensation for damage or loss under the Act, to have the landlord comply with the Act, regulation or tenancy agreement, to make repairs to the unit, to allow a tenant to reduce rent for repairs and to recover the filing fee from the landlord.

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.

### Issues to be Decided

Is the tenant entitled to a monetary order for compensation under the Act?

Should the landlord be ordered to comply with the Act?

Should the landlord be ordered to make repairs to the unit?

Is the tenant entitled to reduce rent for repairs?

### Background and Evidence

The tenancy began on September 1, 2010. Current Rent in the amount of \$1,015.37 was payable on the first of each month.

The tenant testified that she is paying more rent each year and the rental unit does not match the rent being charged. The tenant seeks that the landlord to comply with Section 40 of the Residential Tenancy Policy Guidelines and provide the following upgrades to the rental unit:

- New modern kitchen countertop and cabinets, new kitchen faucet;
- Two new modern towel racks in the bathroom;
- New modern bathroom countertop and cabinet, new bathroom sink, sink faucets and tub and tiling;
- Install a new modern kitchen light; and
- Touch up paint in bathroom, bathroom door, kitchen cupboards and kitchen wall

The tenant testified that she is paying 2014 prices for 1975 fixtures. The tenant stated that the kitchen counter top is rotting, the bathroom sink water will not stay in when she does hand washing of delicate clothing, the seal around the basin is discoloured and the enamel in the basin is corroding; the bath tub enamel is wearing and the tiles are from the 70's; and the kitchen light fixture is from the 70's. The tenant stated that these are very cosmetic and that she has a high standard. The tenant stated that she does not know how or if these repair are a health or safety issue. Filed in evidence are photographs, filed in evidence is a digital device, which contains additional photographs and correspondence.

The tenant seeks to recover the amount of \$500.00 per month for the past four years for having old fixtures, as that would have been the rental rate for 1970 and she has been paying double that amount. The tenant seeks to recover compensation in the total amount of \$5,000.00.

The landlord's agent testified that on August 14, 2014, they inspected the tenant's rental unit and found the unit complies with Section 32 of the Act. The agent stated that the kitchen cabinets and countertop were in good condition although some silicone needs to be replaced along the wall and the countertop. The bathroom tub and tiles were in good condition. The towel rack was in good condition, although the towel rack needed to be tightened at that time and all the light fixtures were in good condition.

The landlord's agent testified that they approached the tenant to make some cosmetic repairs, such as replace the faucet in the kitchen and bathroom, which were not necessary simply to keep the peace, however, the tenant responded by letter dated July 24, 2014, that the offer was not sufficient and sent them a final demand letter on August 8, 2014. Filed in evidence are copies of the said letters.

### 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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

In this case, the tenant is relying on the Residential Tenancy Policy Guideline #40, Useful Life of Building Elements to support their claim for repairs; however, policy guideline #40 is only considered when considering applications for additional rent increases and when determining damages caused by a tenant. It would be unreasonable to use this policy guideline when considering applications for repairs.

Under section 32 of the Act a landlord must provide and maintain residential property in a state of decoration and repairs 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, make it suitable for occupation by a tenant.

In the case before me, the tenant was unable to provide any testimony on how the repairs they have requested are necessary to comply with health, safety and housing standards. I have reviewed the photographs that were submitted by the parties. While the photographs show there is some wear and tear, this would be expected having regard to the age and character of the building. I find the photographs do not support the tenant's position that these items need to be replaced. As an example the photograph marked Exhibit E6 – 9, in the tenant's documentary evidence the tenant testified that the countertop is rotting, however, the photograph shows that the silicone

sealer has aged and has pulled away from the wall and countertop and simply needs to be resealed.

Further, there is no requirement under the Act that the landlord must provide a tenant with new or modern accommodations, simply because a tenant feels that the rent being charged does not match the unit. I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenant's application to order the landlord comply with the Act, to make repairs to the rental unit and to allow a tenant to reduce rent for repairs.

The tenant seeks compensation in the amount of \$5,000.00, based on the rental rate from the 1970's for having 1975 fixtures. I find that to be highly unreasonable. In September 2010, the parties entered into a tenancy agreement based on the fair market value established at that time. The landlord has exercised their rights under the Act by providing a yearly rent increase. I find the tenant has failed to prove a loss exists or a violation of the Act by the landlord. Therefore, I dismiss the tenant's application for monetary compensation.

In light of the above, the tenant's application must be dismissed. As the tenant was not successful with their application they are not entitled to recover the filing fee from the landlord.

### Conclusion

The tenant's application is dismissed.

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: November 06, 2014

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Residential Tenancy Branch

