



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC, FF

### Introduction

This is an application filed by the tenant for a monetary order for money owed or compensation for damage or loss and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord did not submit any documentary evidence and has confirmed receipt of the 17 pages of documentary evidence consisting of 10 pages of emails, 5 pages of photographs and a 2 page written submission. The tenant also submitted a 9 pages documentary evidence package which the landlord has confirmed receiving.

At the outset the landlord requested an adjournment to the conference call hearing due to recently suffering 2 broken ribs and double pneumonia during December of 2014. The tenant disputed the adjournment request stating that it has been over 6 months since the application was filed and that she wished to have a resolution to the dispute. The landlord was asked if there was any specific reason she could not proceed on the scheduled date as it was evidence that she was present and able. The landlord responded that she wished to respond in a written statement and could not provide any reason why she could not do so verbally on the scheduled date. The landlord stated that she was not looking to submit any documentary evidence. I find that the landlord's request for an adjournment is unwarranted and that based upon the landlord's direct testimony that there is no reason to adjourn the hearing. The landlord has provided no reason that she could not proceed on the scheduled date. The landlord's adjournment request is denied.

The tenant submitted a 2 page written chronology of the events of her dispute in a late evidence package on December 15, 2014, but failed to serve the landlord with it. I find that the late evidence is excluded as the landlord was not served with this late evidence and that it cannot be considered for the hearing.

It was clarified with both parties that they could provide direct testimony regarding the tenant's application during the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

Both parties confirmed that there was a signed tenancy agreement, but neither party has submitted a copy or provided any details of it.

The tenant seeks “reasonable reimbursement for loss of quiet enjoyment of property, loss of use of my driveway and back yard, loss of any privacy and additional cost of the gas, hydro and water used in cottage...” The tenant seeks a monetary claim of \$5,000.00 for the combined loss of quiet enjoyment, loss of use of a driveway and backyard and the loss of privacy due to renovation work. The tenant stated that the monetary claim was an arbitrary amount and that she has no idea of the actual amount required or how to calculate it.

The tenant claims that she had exclusive right to the rental property as the sole person renting the house. The tenant states that between April 13 and June 13 she suffered a loss of quiet enjoyment, a loss of use of a driveway and backyard and loss of privacy due to the landlord's renovation of a shed/ outbuilding. Both parties confirmed that the landlord began renovations of an outbuilding that took approximately 2 months. The landlord stated that the renovation work would have been faster had the tenant not impeded the progress of the workers. The tenant states that the landlord stored many materials on the property as shown by the submitted photographs and that when the landlord's workers began work she lost the use of the driveway due to workers and the landlord parking on it blocking her access and that the materials stored made her lose the use of the backyard. The tenant also states that there was a loss of privacy when she discovered a worker inside the rental house. The tenant states that the landlord provided a key for access to the house without her permission or notice. The tenant claims that noise was 24 hours a day/ 7 days per week during this period of time for all of the renovation work. The tenant also claims that she suffered a loss of the cost of utilities (gas, hydro and water) for almost 2 years prior to the renovation of the outbuilding due to the landlord's use for approximately \$30.00 per month. The tenant stated that this was an estimate and that she has no evidence to support this amount claimed.

The landlord disputes the tenant's claim that she had exclusive claim to the rental. The landlord claims that the rental agreement provides for an exclusion to allow the landlord access to the outbuilding as both the landlord and tenant used it as storage. The landlord disputes the tenant's claims stating that renovation debris was removed quickly and that the tenant suffered no loss of quiet enjoyment or of use. The landlord stated that work was for 8 hours during the day only. The landlord stated that the property is approximately 66 X 120 in size and that the rental house is on the S.W. portion of the property while the outbuilding was on the N.E. corner and that the driveway ran along the east side of the property. The landlord states that the tenant was given written notice of the renovation work and that she requested the tenant to leave the screen door unlocked to give access to the electrical panel of the house. The landlord

stated that the tenant has only been occupying the rental for 18 months and that the outbuilding has a separate furnace and hot water tank.

### Analysis

I accept the evidence provided by both parties and find on a balance of probabilities that the tenant has failed to establish a claim for a monetary order of \$5,000.00. The tenant has failed to provide sufficient evidence to satisfy me. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find based upon the evidence of both parties that an inconvenience took place, but that the tenant has failed to provide any details of any actual losses, an actual amount for compensation. The tenant stated in her direct testimony that the landlord's workers were given a key by the landlord to access the rental unit and that the worker entered the rental without notice or permission. This is disputed by the landlord and is further contradicted by the tenant's written statement, "...I'm told by landlord that I need to leave my backdoor unlocked to give him access to circuit breakers. I naively agreed...I stopped leaving it unlocked." The tenant has not provided an explanation or any details of an actual amount required to be compensated for the claimed losses. The tenant's monetary claim is dismissed.

### 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: January 14, 2015

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Residential Tenancy Branch

