



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding JACKEN INVESTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC, RP, RR, FF

### **Introduction**

This hearing was convened in response to an application for dispute resolution by the tenant pursuant to the *Residential Tenancy Act* (the Act). The tenant filed for Orders: as follows:

1. A monetary Order for damage and loss – Section 67
2. An Order for the landlord to make repairs – Section 62
3. Allow the tenant to reduce rent for repairs by the tenant or on a service or facility agreed upon but not provided – Section 65
4. An Order to recover the filing fee for this application(\$50) - Section 72

Both parties attended the hearing and were given opportunity to settle their dispute, present *relevant* evidence, and make *relevant* submissions. The parties each acknowledged receiving all the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

Should the landlord be ordered to make repairs?

Should the tenant be allowed to reduce the agreed rent?

*An applicant bears the burden of proving their respective claims.*

### **Background and Evidence**

The *relevant* undisputed evidence in this matter is as follows. The tenancy began

in 2005. The rental unit is a house and the tenancy agreement includes the surrounding property. The current payable rent is \$1760.00 due in advance on the 1st day of each

month. I do not have benefit of the current tenancy agreement however it is agreed that the agreement is a “standard” agreement with no addenda.

The tenant seeks compensation representing partial loss of use of their patio / back yard resulting from a fallen tree uprooted by a weather related event. The tenant further seeks the landlord to make repairs to the compromised portion of the backyard as a result. The landlord does not dispute that the backyard requires some remedy and agrees to be directed by this Decision.

The parties agree the tree fell over in November 2014. The tree grew out of an above grade brick- enclosed perimeter or planter fixture which was present from the outset of the tenancy. The parties provided photographs of the fixture and the resulting damage from the weather event. The landlord has attended to the cutting and disposal of the fallen tree trunk and remaining is the approximate 12 inch diameter stump and some of the uplifted root taken by the trunk as it fell to its side. The landlord offered to remove the debris surrounding the stump – which is comprised of the broken brick fixture and supporting structural components – and leave the remainder of the tree stump, exposed root, and organic matter to the elements. The tenant disagrees with the landlord’s course and seeks repairs for the backyard to be made clean and again useful. The parties disagree.

The tenant also sought for the landlord to clean the gutters, and the parties were directed how to achieve this portion of the claim: *for the tenant to notify the landlord of a need for repairs or maintenance and for the landlord to act on it if required.* As a result this portion of the tenant’s claim is preliminarily **dismissed**.

In addition to the tenant’s claim for partial loss of use, the tenant seeks compensation for replacement *trellises / lattice* belonging to the tenant and compromised by the fallen tree.

### **Analysis**

In this matter the tenant has advanced claims of loss and the burden of proving claims of loss rests on the tenant who must establish, on a balance of probabilities that they have suffered a loss due to the landlord’s neglect, or failure to comply with the Act. And, if so established, did the tenant take reasonable steps to mitigate or minimize the loss? **Section 7** of the Act outlines the foregoing as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, in this matter the tenant must satisfy each component of the test below:

1. *Proof the loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or agreement*
3. *Verification of the amount required to compensate for the claimed loss.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss.*

The tenant bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses claimed.

In respect to the tenant's claim for repairs to the property, as the tenancy agreement purports to not clarify the parties' obligation in respect to this matter I have turned my deliberation to **Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises**. A copy of all Policy Guidelines and other publications can be accessed at: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant) . Policy Guideline 1 includes a section - **PROPERTY MAINTENANCE** – which states that the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control. An additional section – **FENCES AND FIXTURES** – states the landlord is responsible for maintaining fences or other fixtures erected. I find that the brick- enclosed perimeter / planter fixture is the responsibility of the landlord to maintain or repair.

As a result of the above; and, due to the parties dispute as to the extent of the required repairs or remediation, and, with regard to the landlord's request for direction;

**I Order** that the landlord must do the following before September 15, 2015:

1. Remove and dispose of the *bulk or most noticeable amount of the tree stump and exposed roots* and *all structural debris* resulting from the compromised brick-enclosed perimeter / planter fixture. It must be noted the landlord is not responsible to ensure that *the entire* remaining tree is removed.
2. *At the landlord's discretion*, a). remove the compromised brick- enclosed perimeter / planter fixture to grade, OR, b). repair the brick- enclosed perimeter / planter fixture to a reasonable previous functionality as an enclosed planter fixture. It must be noted the landlord is not responsible to ensure the fixture is restored as previous or with the same material(s) or construction as previous.

The tenant must not prevent or unreasonably impede the landlord from completing these remedies. If the landlord does not complete the above remedies by the Ordered date, through no responsibility of the tenant, the tenant may apply for compensation.

In respect to the tenant's claim for replacement of a *trellis/lattice*, I have not been presented with evidence meeting the above test for loss in this respect. The tenant has not provided evidence in support *the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or agreement*. As a result I must **dismiss** this portion of the tenant's claim.

I accept the tenant's argument that they have been deprived of the *full use* of the patio / backyard – especially during the more usable months. I accept that that the tenant and landlord contracted for the tenant to have a fully useful patio / backyard and the landlord's failure to provide it for the past 8.5 months. I find the tenant's claim of \$350.00 to \$500.00 per month (\$3900.00 to August 2015) to be extravagant, while I accept that the partial loss of the patio / backyard in the more useable months should be reflected. As a result I find a *global amount* representing partial loss of use of the patio / backyard for the entire *duration of the loss* is more appropriate. I grant the tenant the set amount of **\$750.00** for partial loss of use of the patio / backyard, *without leave to reapply*.

#### Calculation for Monetary Order

As the tenant was partially successful in their application they are entitled to recover their filing fee.

Partial Loss of use	\$750.00
<i>Filing fee</i>	<i>\$50.00</i>
<b>monetary award for tenant</b>	<b>\$800.00</b>

**Conclusion**

The landlord has been Ordered to make repairs by September 15, 2015

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$800.00**. The tenant can choose to collect on the Monetary Order through the Small Claims Court (if necessary) and enforced as an Order of that Court, **or** through reducing this amount from a future rent payment.

**This Decision is final and binding on both parties.**

*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: July 16, 2015

---

Residential Tenancy Branch

