



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Northern Property Real Estate Investment Trust  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNDC, ERP, RP, PSF, RPP, RR

### Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / an order instructing the landlord to provide services or facilities required by law / an order instructing the landlord to return the tenant's personal property / and permission to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is 1 of what are approximately 60 units located within a wood frame, 5 storey residential complex, which is thought to have been constructed in the 1970s. The subject unit is situated on the 3<sup>rd</sup> storey.

Pursuant to the original written tenancy agreement, the term of tenancy was from May 01, 2014 to April 30, 2015. Following the end of the fixed term, a new fixed term was entered into for the period from May 01, 2015 to April 30, 2016. Monthly rent of \$666.25 is due and payable in advance on the first day of each month. A security deposit of \$325.00 and a pet damage deposit of \$200.00 were collected.

The tenant claims that a recent rat infestation has led to the deaths of 2 of her pet ferrets, and that her remaining ferret is not well for reasons also related to the existence

of rats around the property. The period of time in question includes the months of May, June and July 2015. In the result, the tenant seeks miscellaneous compensation and has also applied for certain orders to be issued against the landlord. During the hearing the tenant testified that there appear to have been no further problems with rats from the beginning of August 2015 to the present.

The landlord takes the position that proactive measures have been taken by the landlord to address the existence of rats around the property and, further, the landlord argues that there is insufficient evidence that rats contributed directly to the death / ill health of the tenant's ferrets.

### Analysis

Based on the documentary evidence and testimony, and in consideration of the relevant statutory provisions, the various aspects of the tenant's application and my findings are set out below.

While the total compensation sought by the tenant in her application is shown as \$3,543.40, the tenant has not completed a monetary order worksheet or created some other clearly itemized documentation in one place within her evidence, which clearly sets out the various components of the total compensation sought. Rather, there are pages showing copies of various receipts, and pages showing various manual notations describing certain particular expenses. For ease of reference, compensation sought by the tenant is grouped under broad categories below. Additional remedies sought by the tenant in her application are also set out separately below.

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#### *Order instructing the landlord to return the tenant's personal property*

During the hearing the tenant withdrew this aspect of her application.

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#### *Order instructing the landlord to make repairs for emergency or health and safety reasons*

Section 33 of the Act addresses **Emergency repairs**. In summary, I find that there is insufficient evidence of the need for the landlord to undertake repairs "for emergency or health and safety reasons." Accordingly, this aspect of the application is hereby dismissed.

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#### *Order instructing the landlord to make repairs to the unit, site or property*

The concern described by the tenant is limited to repair of the dowel located in the bedroom closet. During the hearing the parties agreed that the landlord will attend the tenant's unit between **9:00 and 10:00 a.m. on August 27, 2015** in order to complete this repair.

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*Order instructing the landlord to provide services or facilities required by law*

Section 1 of the Act broadly addresses **Definitions**, and includes a specific definition of “**service or facility**” as referenced in the Act.

Section 27 of the Act addresses **Terminating or restricting services or facilities**, in part:

27(1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

In summary, I find there is insufficient evidence that the landlord has terminated or restricted any services or facilities as required by law. Accordingly, this aspect of the application is hereby dismissed. Attention, however, is drawn to the tenant's concern regarding the landlord's anticipated introduction of a “monthly fee for parking,” which is addressed later in this Decision.

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*Miscellaneous compensation arising from veterinary consultation / treatment / medicines for the tenant's pet ferrets;*

*Compensation (damages) / rent reduction for “pain and suffering” arising from the death / ill health of the tenant's pet ferrets*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Further, Residential Tenancy Policy Guideline # 6 speaks to "Right to Quiet Enjoyment," and Guideline # 16 speaks to "Claims in Damages."

In addition to generic literature which addresses certain diseases and the role of rodents in transmitting certain of these diseases, documentary evidence submitted by the tenant includes, but is not limited to, a veterinarian's letter confirming that [one of the tenant's ferrets] "is on antibiotics because of a primary or secondary infection."

Documentary evidence submitted by the landlord includes, but is not limited to, a document written by the pest control company hired by the landlord which is dated July 11, 2015. In part, this document reads as follows:

Since 2012 [the company] has been retained by [the landlord] to keep 12 bait stations operating. These are checked and refilled (if required) monthly using an industry standard poison under accepted guidelines.

Further, by email dated July 02, 2015, the pest control company confirmed for the landlord, in part, as follows:

Recently there was an increase in activity when some trees were removed. Since then, we have added several more bait stations, and have increased the service following this report. We will never fully eradicate all rats from the outside world, but we do a monthly maintenance program to control them.

As well, the landlord has submitted excerpts from literature entitled, "The Ferret Owner's Manual," which addresses, amongst other things, "intestinal blockage," "falling," "diarrhea," and "heat stroke."

In summary, I find there is insufficient evidence that the landlord has failed to provide and maintain the residential property in a state of decoration and repair that fails to comply with the "health, safety and housing standards required by law." Further, I find there is insufficient evidence of a direct link between the acknowledged existence of rats around the property, and the death / ill health of the tenant's ferrets (1 died following a fall from the balcony, and another died from an infection). Further, however, even if I had found that there was evidence of a direct link between the death / ill health of the tenant's ferrets and the existence of rats around the property, I am unable to find that the landlord has acted with deliberate negligence, or with willful or reckless indifferent behaviour. Indeed, the landlord has routinely contracted with a pest control company to address the existence of rats. In the result, while the very difficult loss of pets which was suffered by the tenant is acknowledged, and was acknowledged by the landlord during the hearing, I find that the tenant has failed to prove entitlement to related compensation, and this aspect of the application must therefore be dismissed.

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*Compensation for damage to plants, allegedly the result of the activities of rats*

For reasons similar but not identical to those set out immediately above, this aspect of the application is hereby dismissed.

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*Compensation for cleaning products*

Further to findings set out above, it is noted that section 32(2) of the Act provides as follows:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

As earlier noted, I find there is insufficient evidence that the landlord has not undertaken in good faith to maintain the residential property in a state of decoration and repair that “complies with the health, safety and housing standards required by law.” I also find that cleaning products purchased by the tenant were used exclusively for her rental unit, including the balcony. In the result, this aspect of the application must be dismissed.

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*Compensation for gas / postage / photocopies*

Section 72 of the Act addresses **Director’s orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, these aspects of the tenant’s application are hereby dismissed.

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*Introduction by the landlord of a \$10.00 monthly fee for parking*

While the written tenancy agreement provides a particular space for the cost of monthly parking to be documented, no specific monthly fee is identified. The space is blank. This leads me to conclude that parking is included in the monthly rent. However, evidence before me includes a notice from the landlord to all tenants which informs, in part, that effective September 01, 2015, “all parking out front will be “assigned” for a \$10.00 per month fee.” In this regard the attention of the parties is drawn first to section 1 of the Act which defines “**service or facility**” in part:

“**service or facility**” includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

(d) parking spaces and related facilities;

The attention of the parties is also drawn to section 14 of the Act which addresses **Changes to tenancy agreement**, and provides in part:

14(1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

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*Notice of entry to unit*

During the hearing the tenant alleged that her unit has been entered by the landlord and / or by others completing work for the landlord, without providing her with proper notice. The landlord disputed this claim, and testified that proper notice of entry to a unit is always given. I find there is insufficient evidence that proper notice of entry to the unit has not consistently been given. Nevertheless, the attention of the parties is drawn to section 29 of the Act which addresses **Landlord's right to enter rental unit restricted**, and provides in part:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (f) an emergency exists and the entry is necessary to protect life or property.

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*Changing the locks to the unit*

Arising in part from the tenant's concern, as above, that proper notice has not consistently been provided by the landlord or others for entry to her unit, the tenant requests permission to change the locks to her unit. In this regard, section 31 addresses **Prohibitions on changes to locks and other access**, and provides in part:

31(3) A tenant must not change a lock or other means that give access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

As set out immediately above, I find there is insufficient evidence that entry to the unit has occurred without proper notice having been given to the tenant. Further, there is no evidence that keys to the unit are held by persons other than the tenant and the landlord. In the result, I find there is insufficient evidence of a need for permission to be granted for changing the locks to the unit, and this request is therefore dismissed.

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*Carpets in the unit*

The tenant claims that there are no carpets in the unit, even while the written tenancy agreement indicates that carpets are included in the rent. In this regard the parties are encouraged to find a mutually agreeable means for remedying the alleged inconsistency in the event the tenant's claim is correct.

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Conclusion

The tenant's application is hereby dismissed.

Arising from various concerns raised by the tenant, the attention of the parties has been drawn to particular sections of the Act.

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: August 31, 2015

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Residential Tenancy Branch



