



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the respondent. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began in June 1978. The tenant passed away on October 7, 2014. The Executor of the Estate gave written notice to the tenancy ended on November 30, 2014. The rental unit was vacated on November 27, 2014. The rent at the time the tenancy ended was \$1123 per month payable in advance on the first day of the month.

There is a dispute between the parties as to whether a security deposit was paid. The respondent refers to the Application for rent which indicates a deposit of \$100 and a second deposit of \$147 were paid. The landlord takes the position those two payments were applied to the first month rent.

In December 2013 the tenant became ill in her apartment. In order for the fire department and paramedics to reach her they damaged the door to gain entry.

The applicant, through his numbered company offered to repair the damage. He testified he was reluctant to do so because the tenant was difficult. He did not provide an estimate of cost before proceeding with the repairs. On January 16, 2014 the tenant received a bill from the number company for \$1929.26. This included 15 hours of labour for \$1200.

The Executor testified the tenant contacted her on January 29, 2014. She was very upset by what she considered to be grossly excessive charges to someone in a vulnerable position.

The Executor spoke to the applicant. He suggested that she obtain a quotation from a third party. The quotation she obtained from the third party indicates that the labour charge would be \$294. The tenant gave a cheque payable to the number company in the sum of \$698.26 which was to cover labour of \$294 and the actual locksmith charge (\$213.34) and actual cost of the new door (\$190.92). That cheque was cashed.

The applicant subsequently rendered another invoice which does not appear to be dated but claims \$1175 in labour (23.5 hours @ \$50 per hour), \$50 for gas and mileage, \$100 for a helper, and \$50 for paint and primer. The total owing is \$1375.

After the commencement of the within proceeding the applicant rendered a third invoice this time in the name of the landlord. It claims \$1175 in labour for 23.5 hours of labour with the total owing of \$1375.

Briefly, the applicant testified as follows:

- He was reluctant to do the work because of the difficulty he had with the tenant over the fixing of her garburator.
- He outlined the work that he did. He testified he charges \$80 per hour for mechanical work that he does. He also testified that he increased the length of time spent to reflect his actual time worked.
- He testified the door was an outside door and he needed a helper because of its weight.
- The quotation for the labour the Executor did not reflect the type of door he was working on. He suggested it was like comparing apples to oranges.
- He testified the tenant did not pay a security deposit. The deposit referred to in the Application for rent was applied to the first month rent.
- The landlord claims \$50 for the cost of cleaning drapes.
- The rules of the strata provide that you are not permitted to move out through the front door. The landlord also claims \$100 for the cost of moving through the front door.

Briefly, the Executor of the Estate disputes the landlord's claims as follows:

- The claim for the repair of the door is excessive.
- She pointed out the various bills and the inconsistencies in the bills. With one bill he charged for 15 hours at \$80 per hour for a total of \$1200. On the other bill he charged for 23.5 hours at \$50 per hour.
- The bills do not give credit for the \$294 for labour charges that was paid by the tenant.
- The landlord entered the rental unit prior to the end of the tenancy and was doing drywall work. Given the drywall dust any cleaning of the curtains would

have been pointless.

### Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

### Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. After considering all of the evidence I determined the invoice rendered by the applicant was excessive and did not properly reflect what a reasonable tradesperson would charge. The claim for mileage and the cost of a helper is dismissed as the applicant failed to prove he incurred these expenses. There was no contract between the deceased and the landlord, the individual applicant or his numbered company to do the work. The deceased did not agree to a price which is an essential element for a binding contract. However, the applicant is entitled to recover reasonable value for the work that he has done on a quantum meruit basis as the work was requested by the tenant. The cost of the door and locksmith have been paid by the deceased.

I am not satisfied that the quotation obtained by the Executor accurately sets out the work that was done. I am satisfied the installation of the exterior door would take more work. Further, the Executor did not obtain a

release from the applicant when the money was paid. It is clear that the applicant was not agreeing that the \$698.26 paid covers the cost of the installation of the exterior door. In the circumstances I determined the applicant has established a claim of \$600 for the cost of labour. The applicant has already received \$294 for labour.. While this sum was paid to the applicant's number company it must be deducted from the claim of the landlord. Thus I determined the landlord has established a claim of \$306 for the repair of the door.

- b. I dismissed the claim of \$50 for the cost of cleaning the curtains as the landlord's drywall work prior to the end of the tenancy made it irrelevant the cleaning was not done. I do not accept the testimony of the applicant that the drywall dust was minimal.
- c. I dismissed the landlord's claim of \$100 for a penalty or fine for moving through the front door. The landlord failed to prove this claim. Further, the tenancy was over 35 years old. The landlord failed to prove there is any obligation in the tenancy agreement for the tenant to pay such a charge.

**In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$306 plus the \$50 filing fee for a total of \$356.**

The Application for Dispute Resolution does not include a claim for the security deposit. As a result It not appropriate for me to consider whether the landlord is holding a security deposit or whether it was applied to the first month rent. Either party has a right to file a claim relating to the security deposit should they chose.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 05, 2015

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Residential Tenancy Branch

