



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AAT, ERP, LAT, LRE, OLC, PSF, RP, RR, CNR, MNDC, MNSD,  
FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing access to the unit – Section 70;
2. An Order for emergency and other repairs – Section 32;
3. An Order for the Tenant to change the locks – Section 70;
4. An Order suspending or setting conditions on the Landlord's right to enter the rental unit – Section 70;
5. An Order for the Landlord's compliance with the Act - Section 62;
6. An Order for the Landlord to provide services or facilities required by law - Section 65;
7. An Order for a rent reduction – Section 65;
8. An Order cancelling a Notice to End Tenancy – Section 46;
9. A Monetary Order for compensation or loss - Section 67; and
10. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant's evidence that the Landlord was served with the original application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. I further accept the Tenant's evidence that the Landlord was served with the amended application in person and by registered mail on July 28, 2015. The Landlord did not attend the hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Tenant moved out of the unit on August 19, 2015. The Tenant has not provided that Landlord with a forwarding address in writing. As the above claims, with the exception of the claim for compensation and return of the security deposit can only be made for an ongoing tenancy I dismiss these claims. As the claim for the return of the security deposit was made prior to the end of the tenancy and as the Tenant has not provided the Landlord with its forwarding address I dismiss this claim with leave to reapply.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The Tenant and her boyfriend viewed the unit in early April 2015. The Landlord offered the Tenant possession of the unit on April 15, 2015 with no rent payable for April if the Tenant agreed to rent the unit and as long as the Tenant was agreeable that the unit would not be finished with the cleaning or repairs until May 1, 2015. The Tenant obtained an agreement from her then landlord that she would not have to pay rent past April 15, 2015 as she would be moved out and as the Landlord was able to obtain a new renter for that date. On April 11, 2015 the Tenant paid \$1,000.00 to the Landlord, signed the tenancy agreement, and was given the keys to the unit. The tenancy agreement provides that rent of \$2,500.00 was payable monthly on the first day of each month. The Landlord collected \$1,250.00 for a security deposit and \$1,250.00 for a pet deposit. The Landlord refused to conduct a move-in inspection with the Tenant.

Prior to signing the tenancy agreement with rent of \$2,500.00 the Landlord told the Tenant that this rent amount would be reduced by \$50.00 per month if the Tenant would agree to rent the unit. The Tenant claims \$200.00 for having agreed to rent the unit.

The Tenant started moving boxes into the unit on April 11, 2015. As of May 1, 2015 the Landlord had not cleaned the unit. The Tenant spent 26 hours cleaning, including the carpet. The Tenant rented a steam cleaning machine but lost the receipt and does not claim this amount. The Tenant claims compensation at \$20.00 per hour for a total of \$520.00.

The Tenant expected to move in fully on April 15, 2015 however a few days before this date the Landlord informed the Tenant that she could not move into the unit until May 1, 2015 as there was no hot water and no hydro as of yet. The Tenant then had to pay her previous landlord rental monies of \$1,000.00 to remain in her previous unit to the end of April 2015. The Tenant claims compensation of \$1,000.00.

On May 1, 2015 the Landlord refused to move her camper and vehicle parked in the driveway. As a result the Tenant's moving truck had to be parked on the side street and the movers had a more difficult time moving the belongings into the unit. As a result the movers spent an approximate extra 4 hours moving costing the Landlord extra costs at \$80.00 per hour. No receipts, invoice or estimates provided for the costs claimed.

The Tenant had provided the Landlord with postdated cheques for the rent however in mid July 2015 the Landlord informed the Tenant that the cheques were lost. The Tenant withdrew the cash for the rent and then closed the account under the advice of the bank. The Tenant also provided new cheques to the Landlord for the months August 2015 to April 2016, inclusive. The Tenant provided a witness letter for the cash payment of July 2015 rent to the Landlord. The witness letter dated July 13, 2015 indicates that the Tenant was witnessed giving the Landlord \$2,500.00 in cash and that the Landlord refused to provide a receipt.

On July 20, 2015 the Tenant received a notice to end tenancy for unpaid rent. The Tenant disputed the Notice which was scheduled to be heard at this hearing however during the intervening period the Landlord obtained an order of possession and a monetary order for unpaid rent. I note that this Decision is dated August 14, 2015 and

finds the Landlord entitled to an order of possession and a monetary order for unpaid rent for July 2015. The Tenant was served with the order of possession and monetary order and did not file a review of this Decision as the Tenant was overwhelmed with the experience and still unpacking.

When the Landlord asked for August rent the Tenant reminded the Landlord of the rent cheques provided in July 2015. The Landlord then served another notice to end tenancy for unpaid rent for August 2015. The Tenant paid August 2015 rent in cash having the same witness present as for the July 2015 payment. No witness letter for this payment was provided as evidence. The Tenant saw the Landlord burn the cheques provided to the Landlord in July 2015 but does not indicate when this was observed.

The Tenant's boyfriend intended to rent out his own condo for \$1,650.00 per month and had a renter lined up for May 1, 2015 however as a result of the Landlord's behavior to this point the boyfriend cancelled the prospective rental. The Tenant claims \$4,125.00 for this loss. Although asked, the Tenant provided no reason for the boyfriend's name not being included on the tenancy agreement.

Problems with the Landlord continued throughout the tenancy and the Tenant provided a submission containing both a chronology of events and a documentation of the issues and acts of the Landlord. The police were involved in incidents with the Landlord during the tenancy leading up to the final incident that occurred while the Tenant was moving out of the unit. The Landlord threatened the life of the Tenant and her children and was removed by the police for a subsequent psychiatric assessment. The Tenant obtained a restraining order and the Landlord was ordered away from the rental property until Sunday August 23, 2015. No move-out inspection was offered or conducted. The Tenant claims \$1,500.00 for compensation. The Tenant claims return of the security deposit. The Tenant also claims the costs of having to move out of the unit in the amount of \$1,042.00. No receipts, invoice or estimates provided for the costs claimed.

The repairs to the unit that were promised by the Landlord for May 1, 2015 included power washing and painting the exterior and extensive yard clean-up. The Landlord failed to make these repairs and the Tenant and her boyfriend carried out the labour to power wash the exterior of the unit, to rototill and restore 3 gardens overgrown by weeds, to prune trees and bushes, to repair damaged stone patio that had weeds and roots growing in between the stones. The Tenant used the Landlord's power washer. The Tenant claims \$800.00 for over 40 hours work at \$20.00 per hour.

The Landlord was to supply garden tools and a shed for the outdoor work but failed to do so. The Tenant purchased a shed for use and claims \$693.00. The Tenant has no receipt for this claim. The Tenant purchased a lawn mower and weed-eater and claims \$538.00 for the average cost researched by the Tenant. The Tenant took these tools with her at move-out.

The Landlord lives in a barn located on the residential property. The tenancy agreement requires the Tenant to provide its own hydro for the rental unit. During a dispute with the Landlord over the main breaker repeatedly shutting off and as an outcome of an inspection by an electrician, the Tenant discovered that the Landlord's unit was being supplied with hydro through an underground line from the Tenant's unit. This explained the exorbitant hydro bill received by the Tenant. The line was disconnected by the electrician for not being up to code. The Tenant claims \$375.22 and provided a receipt for the period April 30 to June 29, 2015.

The unit came with an outdoor hot tub that the Tenant was required to maintain however the tub did not work on April 11, 2015 and that the Landlord agreed to have it repaired and operational by May 1, 2015. In preparation for the use of the tub the Tenant purchased hot tub chemicals and supplies. The Landlord told the Tenant that the cost of \$1,000.00 to repair the tub was too much and the Landlord refused to repair the tub. The Tenant consulted the people at the hot tub store and was informed that the tub could have been repaired for approximately \$300.00. The Tenant claims

compensation for the supplies purchased in the amount of \$98.34. A receipt for this amount was provided.

The unit included the attached garage however the Landlord had personal belongings, including vehicles in the garage and on the driveway and refused to remove them. The Tenant specifically rented this unit for the garage and driveway as the Tenant and her boyfriend has three vehicles between them. On May 15, 2015 the Tenant informed the Landlord in writing that the belongings were to remove that day or the Tenant would charge the Landlord \$25.00 per day until the Landlord's belongings were removed. The Tenant claims \$2,550.00.

The total amount claimed in the application is \$5,000.00 and there was no amendment made to the application to increase the amount claimed.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. As the Tenant agreed to the amount set out in the tenancy agreement and not the amount previously offered by the Landlord, I find that the Tenant has not substantiated that a lesser amount of rent was payable. I therefore dismiss this claim.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair 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, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable

steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed evidence of the Tenant I find that the Landlord failed to provide a clean unit to the Tenant as agreed and as required and that as a result the Tenant had to clean the unit. Noting however that in the Tenant's chronology the Tenant indicates that the carpets and windows had not been cleaned as of the end of July 2015, I find that the Tenant has not substantiated the amount claimed. As the Tenant did not provide an invoice setting out the cleaning details I find that the Tenant has only substantiated a nominal amount of **\$200.00** for the cleaning. I base this amount on a reasonable rate of \$25.00 per hour for an average time of 8 hours as there are no photos indicating a greater than average amount of cleaning required.

Based on the undisputed evidence that the Landlord failed to clean the exterior of the unit as agreed but noting that the amount claimed is not supported by an invoice detailing the tasks or hours I find that the Tenant is only entitled to a nominal amount of **\$400.00**. I base this amount on a consideration of the photos of the grounds.

Based on the Tenant's undisputed evidence that the Landlord agreed that the Tenant could move into the unit on April 15, 2015 and was then refused, I find that the Tenant has substantiated that she incurred a cost of \$1,000.00 to live elsewhere for this period. I find that the Tenant is therefore entitled to the claimed amount of **\$1,000.00**.

Based on the Tenant's undisputed evidence I find that the Landlord blocked the Tenant's access into the unit for move-in thereby causing a greater cost to the Tenant. However as no invoice was provided for the costs incurred and considering that the amount being claimed appears arbitrary I find that the Tenant is only entitled to a nominal amount of **\$100.00**.

Considering that the Tenant's boyfriend is not a party to the tenancy agreement and the losses were not experienced by the Tenant, I dismiss the claim for the boyfriend's lost rental income.

Based on the Tenant's undisputed evidence as provided orally and in the chronology, I find that the Tenant has substantiated that the Landlord threatened and harassed the Tenant and entered the Tenant's unit without right during the tenancy. I find therefore that the Tenant has substantiated the amount claimed of **\$1,500.00**. As the Tenant was required to move out of the unit regardless of the Landlord's actions by virtue of the order of possession provided to the Landlord I find that the Tenant has not substantiated that the Landlord caused the moving costs claimed and I dismiss this claim.

Although I accept the undisputed evidence that the Landlord failed to provide the agreed upon shed and tools, given the lack of receipts and considering that the Tenant retained some or all of these items, I find that the Tenant has not substantiated the loss claimed and I dismiss this claim.

Based on the Tenant's undisputed evidence that they incurred a cost for the Landlord's use of their utility, I find that the Tenant has substantiated its claim to **\$375.22**.

Based on the Tenant's undisputed evidence that the Landlord failed to provide an operational hot tub and failed to repair that hot tub and accepting that the Tenant incurred costs for products in reliance on the use of the hot tub, I find that the Tenant is entitled to the claimed amount of **\$98.34**.

Although the Tenant claims a rental charge for the garage as there was no agreement on this rental to the Landlord, I find that at most the Tenant can claim loss of use of the garage to an amount that reflects the loss in the rental value. Considering the overall amount of rent paid and the number of vehicles that required parking by the Tenant, I find that the daily amount claimed by the Tenant for rent is a reasonable amount to



compensate the Tenant for the loss of the garage. I also consider that the Tenant sustained this loss from the onset of the tenancy to the end of the tenancy. I find that the Tenant is therefore entitled to the amount claimed of **\$2,550.00**.

Section 77 of the Act provides that a decision is final and binding on the parties. Given the previous Decision dated August 11, 2015, I find that the matter of rent for July 2015 is not a matter I can consider. Further the issue of whether or not rent for August 2015 was paid is not relevant to the decisions on the Tenants entitlement and I therefore do not consider this matter either.

As the claim for the security deposit is premature, I dismiss this claim with leave to reapply.

Rule 2.2 of the RTB Rules of Procedure provide that a claim is limited to what is stated on the application. As the total entitlement of the Tenant exceeds the monetary amount set out in the application, I find that the Tenant is only entitled to **\$5,000.00**. As the Tenant has reached its entitlement I dismiss the claim for recovery of the filing fee.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,000.00**. If necessary, this order may be filed in the Small Claims 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: September 4, 2015

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Residential Tenancy Branch

