



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Landmark Realty Mission Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, RR, FF

### Introduction

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

1. A Monetary Order for emergency repairs - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order for the return of the security deposit - Section 38;
4. An Order for a rent reduction - Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Parties agree that the matter of the security deposit has been dealt with in a previous Decision dated August 26, 2015. I therefore dismiss Tenants’ claim for its return. As there is no ongoing tenancy the claim in relation to a rent reduction is also dismissed.

### Issue(s) to be Decided

Is the Tenant entitled to compensation for emergency repairs?

Is the Tenant entitled to compensation for any loss during the tenancy?

### Background and Evidence

The tenancy started on December 1, 2014 and ended February 28, 2015. Rent of \$1,550.00 was payable monthly.

The Tenant states that although they paid rent for the full month of December 2015 they were unable to occupy the unit as repairs were being made and the unit was not habitable for the first 10 days. The Tenant states that at the walk through in November 2015 deficiencies were noted and the Landlord told the Tenants that the unit would be ready for December 1, 2015. The Tenant states that when they started to move in on December 1, 2015 the contractors were still present. The Tenant states that they were only able to store a few items. The Tenant states that floors were being dug up, the washer and dryers were being hooked up, the bathroom required completion, including the replacement of the un-working toilet and that the Landlord still had belongings in the garage. The Tenant states that they told the Landlord that they could not move into the unit with it being in this condition. The Tenant states that when they checked on December 10, 2015 the toilet was still not hooked up. The Tenant states that the toilet was installed between December 10 and 12, 2015 and the Tenants moved into the unit on December 12, 2015 but that there was still no washer and dryer and the contractors had left a mess. The Tenants states that they had no use of a bathroom until the toilet was installed. The Tenant states that after the Tenants moved in the Landlord removed all the bedroom doors to install door knobs on them but that they were never returned and replaced before the end of the tenancy. The Tenants claim compensation for loss of use of the unit.

The Landlord states that despite some minor repairs being done at the onset of the tenancy the unit was habitable. The Landlord states that she did tell the Tenants the unit was ready for move in. The Landlord states that there was one contractor that worked for a few hours at a time within the 10 day period to carry out such improvement tasks as creating a window space, upgrading a flimsy external door and installing a sump pump. The Landlord states that the contractor also replaced the toilet but that the Landlord does not know what was wrong with the original toilet. The Landlord states that she did not know that the original toilet was not working.

The Tenant states that the external door was originally like a barn door with just boards that did not fit in the casing. The Tenant states that the door was secured only by a cross board. The Tenant states that the Landlord only patched the door with additional boards leaving gaps around the edges and bottom and the cross board still had to be used to secure the door. The Tenant states that an eave was left draining directly onto the patio creating a hazard. The Tenant states that the washer and dryer were not hooked up. The Tenant states that the original broken toilet was replaced with a used toilet. The Tenant states that the lever on the replacement toilet was rusted and not operational.

The Tenant states that she verbally informed the Landlord several times of these problems and the Landlord would say it would fix things but never did. The Tenant

states that the Tenant sealed the door and claims the costs of materials of \$17.34. The Tenant states that the eave was diverted and claims the cost of materials of \$15.65. The Tenant states that the dryer was hooked up and claims the costs of the elbow and other parts of \$30.43. The Tenant states that the flush lever was replaced and claims the costs of \$17.91. The Tenant states that the work would have been done on or around December 14, 2015, the date of the invoices for the materials.

The Landlord states that the Tenants were given the keys to the unit at the walkthrough and that they informed the Landlord that they would not be moving into the unit until the 12<sup>th</sup>. The Landlord states that they have no record of these issues being raised. The Landlord states that it has no recall of being verbally informed of these problems. The Landlord states that the Tenants were never authorized to carry out the repairs and that the tenancy agreement requires the Tenants to make written request for such authorization. The Landlord states that the washer and dryer were noted on the walkthrough report as good. It is noted that no copy of the condition report was provided for this hearing. The Landlord states that no opportunity was given to the Landlord to make the repairs for which the Tenants are claiming material costs.

The Tenant states that they paid for the whole month and expected to have use of the unit and wanted to be able to move into the unit prior to the 12<sup>th</sup> as they had to be out of their unit by that date. The Tenant states that the Landlord never told the Tenants to put requests for repairs into writing until the Landlord was told that the Tenants were vacating the unit. The Tenant states that she initially trusted the word of the Landlord and did not know that the Landlord would not carry out the required repairs without the Tenant putting requests in writing. The Tenant states that the Landlord did not have the condition report form present at the move in walkthrough and that the Tenant had no idea what was written by the Landlord. The Tenant states that although they were provided a copy of the report the Tenants have no recall of signing the written report. The Tenant states that the Landlord knew the washer and dryer were not hooked up as the basement was being dug up and that the Landlord knew parts were needed for the hook ups.

### Analysis

Section 33 of the Act provides that under certain conditions a landlord must reimburse a tenant for emergency repairs made by the tenant. This section defines emergency repairs to mean repairs that are urgent, necessary for the use of residential property and made for the purpose of, inter alia, damaged plumbing fixtures. With the possible exception of the toilet lever, none of the repairs made by the Tenants were emergency repairs. I also accept the undisputed evidence that the tenancy agreement required the Tenants to request permission in writing in order to be reimbursed for any expenditure and that the Tenants did not put anything in writing. The Tenants had no authorization to make the repairs that were done. I therefore dismiss the Tenants' claims for reimbursement of their expenses to repair the unit.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that 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. This section further provides that the claiming party must do whatever is reasonable to minimize the damage or loss. I accept the Tenant's persuasive evidence that there was no working toilet in the unit for the first 10 days of the tenancy and find that the Tenants were not able to occupy the unit for this period. I find the Landlord's evidence of lack of knowledge about the state of the original toilet either to be untruthful or to be evidence of a negligent approach to ensuring the provision of essentials. As the Tenants paid for occupancy including the first 10 days I find that the Tenants are entitled to be compensated for its loss of occupancy for the first 10 days.

Additionally, and accepting the Tenant's evidence, as the laundry facilities were not hooked up, as the door allowed in cold air, as the eaves leaked on the patio and as the toilet lever was rusted and not operational for a further four days, I find that the Tenants suffered further inconvenience, a loss of use of facilities and a loss of the value paid for the tenancy. I consider the Tenants' evidence of making repairs on or around December 14, 2015 as evidence of mitigation for their losses. I also accept the Tenants' more persuasive evidence that the Landlord was repeatedly verbally informed of the required repairs and find that the Landlord was negligent in not providing these repairs within the first 14 days of the tenancy. For these reasons and the above noted loss of use of the unit due to the toilet, I find that the Tenants have substantiated a total loss equivalent to 14 days of rent in the amount of **\$700.42** ( $\$1,550.00/31 = 50.03$  per day x 14 days). As the Tenants' application has met with substantial success I find that the Tenants are entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$750.42**.

### Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$750.42**. 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: February 05, 2016

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Residential Tenancy Branch

