



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brookside Senior Citizens Society  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNDC, RP, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order that the landlord make repairs to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property, and more specifically to sidewalks?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damage to personal property?

### Background and Evidence

**The tenant** testified that this tenancy began about 2012 and the tenant still resides in the rental unit. Rent in the amount of \$512.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant which is still held in trust by the landlord.

The tenant further testified that on November 25, 2015 the tenant used a cart that the landlord has available for tenants to carry items to and from their vehicles. The tenant put a cooler in the cart and placed a box on top of the cooler. The box contained an electronic tablet, and the tenant had ahold of it with both hands. The cart wheels fell into a crack in the sidewalk causing the tenant to stumble and the box to fall onto the sidewalk. The tablet glass smashed and had to be replaced.

The tenant further testified that the sidewalks are very unsafe and people can trip on heaving spots, plus wide gaps are an extremely dangerous hazard. The tenant did some research and found that the sidewalks are not on City property or inspected by anyone. The City has by-laws that deal with hazards on City property, which shows a hazard rating when the cracks between the concrete slabs are more than 2.5 cm in width, and those on this property are 4 cm or more, but that only applies to City property. The landlord has had the patio area repaired by taking the wooden 2 X 4's out and concrete repaired and no one uses it except 1 lady who waters plants. The sidewalk is sloped and when the tenant went down the slope on November 25, 2015, the wheel of the cart he was pushing got stuck and the tenant lost hold of the box when he staggered. The box hit the concrete sidewalk and tablet smashed.

The tenant submits that the sidewalks are unsafe for elderly people and the tenant seeks to have the landlord repair them. The tenant also seeks monetary compensation for the broken tablet, which cost \$431.60 to replace.

**The landlord's agent** testified that the tenancy began on March 1, 2011 and a move-in condition inspection report was completed at that time. The security deposit collected from the tenant by the landlord was \$250.00.

The landlord's agent further testified that the box on the cart being pushed by the tenant was not secured with a bungee cord or anything, and the tenant should exercise prudence when carrying a fragile object. There have been no previous incidents, and the landlord's agent has been working at the rental complex for 15 years. People in their 90's and a blind person also resided in the complex and had no issues.

The sidewalk was built according to the code that applied then in 1975, which was before the landlord's agent was born. The landlord's agent believes that frost heaves caused uneven portions of the sidewalk, however no parts are heaved or settled. Digital photographs have been provided by the landlord, and the landlord's agent testified that there is no tripping hazard. Management took some of the 2 X 4's out and there are none that are raised. The wheel of the tenant's cart went into one of the 2 X 4 areas, and if the cart had bigger wheels, it would have moved easily. The landlord believes the tenant needs to take some accountability. The tenant walks twice a day,

and had no complaints about the sidewalk until he precariously left his tablet in a bad place.

### Analysis

Firstly, with respect to the tenant's application for repairs to the sidewalk, the *Residential Tenancy Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that comply with the health, safety and housing standards required by law:

**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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I accept the testimony of the tenant that the City has a rating of 2.5 cm, and that the sidewalks on the rental property have spaces of 4 cm or more. I also find that 4 cm is approximately the same width as a 2 X 4. ( $2.54 \text{ cm} = 1 \text{ inch}$ .  $2.54 \times 1.5 = 3.81 \text{ cm}$ ). I have reviewed the digital evidence provided by the landlord, and I don't see that any of the 2 X 4's are raised or hazardous. The photographs show that some of the 2 X 4's are missing, but the gaps between them and the ones with 2 X 4's still embedded do not appear to be a hazard. In the circumstances, I am not satisfied that the tenant has established that the sidewalks are unsafe or that the landlord has an obligation to repair them.

Where a party makes a monetary claim against another party, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

I have reviewed the photographs provided by the tenant of the tablet with the smashed glass, and I am satisfied that the damage or loss exists. However, having found that the sidewalks do not require repair by the landlord, I am not satisfied that the tenant has

established that the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement.

The tenant's application is hereby dismissed.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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 16, 2016

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Residential Tenancy Branch