



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND, FF (Landlord's Application)  
MNDC, FF (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on July 4, 2016 and by the Tenant on December 11, 2016.

The Landlord applied for a Monetary Order for damage to the rental unit and to recover the filing fee from the Tenant. The Tenant applied for damage or loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee from the Landlord.

Both parties appeared for the hearing and provided affirmed testimony. While the Landlord provided disputed submissions in relation to the service of the Tenant's Application, the Landlord agreed to move forward with this hearing as he had been provided with sufficient notice of the Tenant's claim and an opportunity to provide evidence prior to this hearing.

The Landlord confirmed receipt of the Tenant's Application by registered mail and confirmed that he had only provided one invoice as documentary evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence and make submissions to me on the evidence provided.

### Issues to be Decided

- Is the Landlord entitled to cleaning costs and alleged damage caused to the lift/elevator?
- Is the Tenant entitled to the costs for rebutting the Landlord's monetary claim?

### Background and Evidence

Both parties agreed that this tenancy started on September 1, 2013 as a month to month tenancy. A tenancy agreement was signed and rent was \$1,500.00 payable on the first day of each month which was then reduced \$1,400.00 per month. The tenancy ended on September 30, 2015.

The Landlord testified that the Tenant failed to clean the rental unit at the end of the tenancy. The Landlord testified the Tenant left the windows dirty, there were scuff marks everywhere, and the appliances had not been cleaned. The Landlord testified that the Tenant failed to complete a condition inspection of the rental unit but submitted that the matter of the condition inspection had already been dealt with in a previous hearing conducted by me on June 6, 2016, the file number for which appears on the front page of this Decision.

The Landlord claims \$200.00 for the cost of having to clean the rental unit which he paid to a cleaning person in cash. The Landlord confirmed that he had not provided a receipt for this cost because he had paid for the cost at a reduced rate in cash.

The Tenant denied the Landlord's claim and pointed me to a multitude of photographs provided into evidence which showed that the rental unit was left in a clean condition including the appliances.

The Landlord responded stating that he had not provided any photographic evidence because his photographs and the ones provided by the Tenant were not sufficiently close enough to show the dust and dirt left behind by the Tenant.

The Landlord claims \$3,142.81 for alleged damage caused by the Tenant to the elevator in the rental unit. The Landlord testified that the Tenant was strictly prohibited from using the elevator that was present in the house for moving in and out of the rental unit. The Landlord testified that the Tenant tricked the Landlord's girlfriend for a key to the elevator and the Landlord's girlfriend provided this to the Tenant not knowing she was not supposed to. The Landlord explained that the elevator had a weight limit which was exceeded by the Tenant. The Landlord submitted that at the end of the tenancy when the Tenant moved out it was left four feet high from the ground and was inoperable.

The Landlord testified that he contacted a repair company that specialises in elevator maintenance who then remediated the damage and provided him with an invoice which the Landlord provided into evidence. The invoice shows that some of the parts used were called "symmetry" parts. However, the invoice does not indicate or suggest how

the alleged repair was caused. The Landlord acknowledged that he had not had the lift maintained throughout the tenancy as he was required to do so in accordance with maintenance protocols. However, the Landlord submitted that the lift was not being provided to the Tenant for the tenancy as it was for disable renters only which the Tenant was not.

The Tenant disputed the Landlord's claim that he caused damage to the elevator. The Tenant submitted a copy of the advertisement for the rental unit which he had responded which states "attached garage w/wheelchair lift". The Tenant stated that he was not told by the Landlord at any point before or during the tenancy or in writing that he was prohibited from using the elevator. The Tenant testified that he asked the Landlord's girlfriend for a key to the elevator which was provided to him by her and that he did not trick the Landlord's girlfriend into doing so. The Tenant testified that when he vacated the rental unit the elevator was working fine.

The Tenant explained that he had contacted several elevator companies for them to examine the invoice evidence provided by the Landlord. One of the companies then reported back to the Tenant that the lift inside the rental unit could not have had "symmetry" parts installed in it as the make of the lift was incompatible with these parts and that the repair person the Landlord used was not an authorised dealer to make these repairs.

The Tenant submitted that the Landlord's Application was a revenge tactic used by the Landlord because he had lost a previous hearing and the Tenant was proceeding with enforcing a Monetary Order he had already obtained against the Landlord. The Tenant claims the \$160.00 cost of the report he obtained from the elevator company he employed to examine the Landlord's invoice as well as registered mail costs for service of his evidence to the Landlord.

### Analysis

Under Section 7 of the Act a party who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss. Section 67 of the Act provides that if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the responsible party pay compensation to the applicant. When a party makes a claim for damage or loss under the Act, the burden of proof is on the applicant to prove the existence of the loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, an arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have carefully considered the evidence before me in this case and I apply the above test in making findings on the parties' monetary claims as follows.

With respect to the Landlord's monetary claim for cleaning costs, I find the Landlord failed to provide sufficient evidence that the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy. The Landlord was found to have been in breach of the Act in a previous hearing which I already decided on for failing to complete a condition inspection report for this tenancy. Therefore, there is no comparative evidence before me.

I find the Tenant's photographic evidence is compelling and conclusive evidence that the Tenant left the rental unit clean. The photographic evidence clearly shows the appliances were clean and therefore this undermines and rebuts the Landlord's oral evidence. The Landlord also failed to provide a receipt for the cleaning costs and I find it hard to believe that the Landlord was not able to get a receipt for this cost because he paid a low amount in cash. I find the Landlord has failed to meet the burden to prove this portion of his monetary claim which is hereby dismissed.

With respect to the Landlord's monetary claim for the alleged damage to the elevator, I also find the Landlord has failed to meet the burden to prove this claim. The Landlord relied on oral testimony that the Tenant caused damage but provides insufficient evidence of how the alleged damage was caused by the Tenant during or at the end of the tenancy. I find the invoice evidence does not contain conclusive or sufficient information to prove the Tenant was responsible for any damage to it. The Landlord acknowledged that the elevator had not been maintained regularly and therefore I find

that it is plausible or likely that any problem with the elevator at the end of the tenancy could have emanated from the lack of maintenance to it.

I find the Landlord's allegation that the Tenant was specifically prohibited from using the elevator at the start of the tenancy lacks credibility. This is because I find the Tenant's evidence of the advertisement states that the elevator was part of the tenancy and the Landlord did not provide any part of the tenancy agreement that stated that the elevator was not to be used by the Tenant.

It would be reasonable to expect that the Landlord would have taken more steps to ensure that a prohibition in a tenancy of an expensive piece of equipment, such as an elevator, would have been documented in writing rather than relying on an alleged verbal instruction which the Tenant denied. Therefore, based on the evidence before me I am only able to conclude that the Landlord has failed to establish that the Tenant was responsible for any damage caused to the elevator. As a result, I dismiss the Landlord's Application.

As I have not used the Tenant's evidence he obtained from the elevator companies to make the above findings on the Landlord's Application, I deny the Tenant's monetary claim for recovery of the costs to rebut the Landlord's claim. In addition, the Act does not allow me to award any party costs associated with preparation for dispute resolution, such as mailing and printing costs. Therefore, the Tenants' monetary claim for mailing costs is also dismissed. As a result, I dismiss the Tenant's Application.

### Conclusion

The Landlord's and Tenant's Application are dismissed without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 04, 2017

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Residential Tenancy Branch