



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OLC ERP FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on January 5, 2017. The Tenant filed seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; to order the Landlord to comply with the *Act*, Regulation, or tenancy agreement; to make emergency repairs; and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's agent (the Agent) and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Agent made all submissions on behalf of the Landlord. Therefore, for the remainder of this Decision those submissions will be listed as being from the Landlord. The Landlord requested that her first name be spelled correctly on the application. The Tenant did not dispute the requested change; therefore, the style of cause of this Decision was amended to reflect the correct spelling of the Landlord's name, pursuant to section 64(3)(c) of the *Act*.

Each party acknowledged receipt of the evidence submitted by each other and no issues regarding service or receipt were raised. As such, I accepted the submissions from both parties as evidence for these proceedings. It should be noted that both parties submitted photographic evidence via fax so none of the photographs displayed a clear picture of the snow as faxed documents are in black and white and tend to be darker in shaded areas.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Tenant proven entitlement to monetary compensation under the *Residential Tenancy Act* (the *Act*)?

2. Has the Tenant proven he is in need of emergency repairs?
3. Should the Landlord be ordered to comply the Act, Regulation, or tenancy agreement?

### Background and Evidence

The parties entered into a written fixed term tenancy agreement which commenced in September 2013 and switched to a month to month tenancy after one year. Rent is currently \$1,045.95 payable on the first of each month. In August 2013 the Tenant paid \$497.50 as the security deposit.

The Tenant entered into a separate written agreement for parking. That agreement required the Tenant to pay the Landlord \$40.00 per month for parking.

The Tenant submitted that on December 18 or 19, 2016 he attempted to come out of the parking lot and his car slipped backwards due to the presence of snow. He stated his car was hit by the overhead door that was closing, which broke his windshield. The Tenant asserted he missed three days of work because the Landlord failed to shovel the driveway into the enclosed parking lot.

The Tenant now seeks compensation of \$2,172.00 which is comprised of \$420.58 to repair his broken window; \$700.00 for loss of quiet enjoyment because he could not access the exit due because the Landlord did not clean the snow; plus two months free rent.

The Landlord disputed the Tenant's application and argued there was a dramatic snow fall which occurred on December 19, 2016; as supported by her documentary evidence. She stated they could not clear the snow until it stopped snowing; which is what they did. I heard the Landlord state the snow was cleared from the driveway on December 20, 2016 before 10:00 a.m.

The Landlord testified this was a motor vehicle accident and not a residential tenancy issue. She submitted the adjuster from the provincial insurance company told her the Tenant had to have been going between 20 and 30 km per hour to cause that amount of damage which included bending the parking garage door and cracking the metal post. She argued the Tenant did not have adequate winter tires on his car and the car was a front wheel drive which is not made for traveling in snowy conditions. The Landlord argued there are several other tenants who were able to get in and out of the parking lot with no problems that day.

The Landlord asserted the Tenant's photographic evidence was taken as soon as the snow stopped. She argued the driveway was not that steep so there should have been no problems with getting out if the Tenant had proper snow tires.

The Landlord testified they should not have to pay the Tenant for a time he was absent from work as the Tenant could have taken a bus, the sky train, or even walked to work.

The Tenant argued he was not able to take a bus to work because he had heavy equipment he needed to bring with him. The Tenant disputed the Landlord's submissions and said the driveway has never been cleaned once and argued the Landlord's picture was taken after the snow melted.

The Tenant stated he did not have insurance coverage which covered glass breaking on his car. He argued he did have snow tires and that the Landlord submitted a picture of someone else's car and tires.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the tenant has the burden of proof.

In this case I find the Tenant submitted insufficient evidence to prove he did what was reasonable to mitigate any loss he suffered during the snow storm which occurred December 18 or 19, 2016. I make this finding in part because the Tenant made a personal choice not to have glass insurance coverage. Furthermore, I accept the Landlord's submissions that the claim relating to damage to the Tenant's car was a motor vehicle insurance matter and not a residential tenancy matter.

In addition, I conclude the Tenant ought to have found another means to attend work, such as taking a taxi, or other form of public transit if he was not able to drive his car in the snow as a result of the damage which resulted from his motor vehicle accident.

Snow storms may be considered exceptional circumstances in the municipality where the Tenant resides. In such circumstances a landlord is granted a reasonable amount of

time to clear the areas of snow. In the presence of disputed evidence, I conclude the Tenant failed to prove the Landlord did not comply with the *Act*. There were no submissions made relating to the need for emergency repairs. Shoveling snow is not considered an emergency repair. Accordingly, I dismiss the Tenant's application in its entirety; without leave to reapply.

### Conclusion

The Tenant was not successful with his application and it was dismissed in its entirety.

This decision is final, legally binding, and 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 03, 2017

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Residential Tenancy Branch