



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC CNC MNDC MNSD FF

### **Introduction:**

Both parties made Applications for Dispute Resolution and both attended the hearing and gave sworn testimony. The tenant agreed she received the Notice to end Tenancy dated March 30, 2017 to be effective April 30, 2017 and the Application for Dispute Resolution personally. The landlord agreed she received the tenant's Application by registered mail. I find that the documents were legally according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for repeated late payment of rent and other causes;
- b) A Monetary Order for damages to the property pursuant to sections 7 and 67;
- c) To retain the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Act for orders as follows:

- e) To cancel a Notice to End Tenancy for cause;
- f) To recover her security deposit; and
- g) To recover the filing fee pursuant to section 72.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Has the landlord proved the tenant damaged the property beyond reasonable wear and tear and the cost to repair? Are they entitled to retain the security deposit to offset the amount owing and to recover the filing fee?

Or is the tenant entitled to any relief? Is the tenant entitled to the refund of their security deposit?

**Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on August 24, 2015, a security deposit of \$1150 was paid and rent was \$2300 a month. The parties agreed that the tenant vacated on April 30, 2017 so there is no longer an Application for an Order of Possession or an Application to cancel the Notice to End Tenancy. The remaining issues are the landlord's claim for damages and the tenant's for the return of the security deposit.

The landlord claims \$7000 for fixing the kitchen cabinets which she states the tenant broke. She said there was no move-in report but the cabinets were new in 2013. The tenant said the caulking and adhesive around the sink basins was poorly applied. This allowed water to leak between the sink and the counter. The leaking water wet the wood on the side of the cabinets and this split the wood. As a result, the cabinet doors were falling off. They provided photographs to illustrate the problem. They said they told the landlord in April 2016 but she refused to fix it. The landlord said she discovered the damage in April 2016 when she had a bank appraiser going through the home. She did not fix the problem for she believed it was the tenant's responsibility to fix it.

When queried about the cost of repair, she said a construction person said it would be \$6800 but she did not know she had to put in evidence of estimates or invoices.

The tenant claims a refund of their security deposit but they said they have not yet provided their forwarding address in writing to the landlord. The tenant had some complaints about how the landlord fulfilled her responsibility to repair. She mentioned unclogging a sink, replacing lightbulbs and being charged a meter charge for a gas meter which was necessary because of a gas fireplace they had in their home. I advised the tenant that these complaints were not relevant to her present claim. I advised her that some of these items are a tenant's responsibility. I advised her that the responsibilities of the parties are set out in Residential Tenancy Policy Guideline #1. I declined to hear further complaints as they were not relevant to the issues in this Application.

In evidence is the one month Notice to End Tenancy, proof of service, a letter from the landlord dated March 29, 2017, requesting the tenant to either repair the cabinet or provide the funds to repair. The tenant provided several photographs of the kitchen

cabinet and a garburator problem. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Order of Possession**

I find that the tenant vacated on April 30, 2017 so an Order of Possession is no longer required. The tenant's Application to set aside the Notice is no longer relevant.

#### **Monetary Order:**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

#### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find insufficient evidence that these tenants caused the damage. I find the tenant's evidence credible that the damage was caused by caulking or adhesive that failed and caused water to leak inside the cabinet. I find the tenant's credibility well supported by the photographs they provided in evidence. I also find insufficient evidence of the cost of repair. The landlord provided no invoices or estimates to support her claim. Furthermore, I find the weight of the evidence is that she did not do what was reasonable to minimize the damage or loss as she said she discovered the problem in April 2016 but disputed with the tenants about the responsibility for the repair rather than trying to fix the leaking and minimize damage to the cabinets. I find her not entitled to recover her costs as claimed. I dismiss the Application of the landlord in its entirety without leave to reapply as I find insufficient evidence to support her claim.

In respect to the claim of the tenant for the refund of the security deposit, section 38 of the Act provides that the landlord must either return the deposit or make an application to claim against it within 15 days of the later of the tenant vacating and **providing their forwarding address in writing**. I find the tenant vacated on April 30, 2017 but has never provided their forwarding address in writing. I find the tenant's application is premature and dismiss it with leave to reapply.

I caution both parties to read section 38 of the Act regarding the responsibility to refund the security deposit.

**Conclusion:**

I find an Order of Possession is no longer necessary. I dismiss the application of the landlord in its entirety without leave to reapply. I find them not entitled to recover their filing fee due to lack of success.

I dismiss the application of the tenant as it is premature and find them not entitled to recover their filing fee due to lack of success. I give them leave to reapply if necessary for the refund of their deposit.

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: May 16, 2017

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Residential Tenancy Branch