



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNR, MNDC, OLC, ERP, RP, PSF, LAT, RR

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for:

- an order to the landlord to make emergency repairs and repairs to the rental unit pursuant to section 32 and 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were in attendance I confirmed that there were no issues with service of the tenant’s application for dispute resolution or either party’s evidentiary materials. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant’s application for dispute resolution and the evidentiary materials. I find that the tenant was duly served with copies of the landlord’s evidence in accordance with section 88 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award for damages and emergency repairs as claimed?  
Is the tenant entitled to an order that the landlord makes repairs or provides services?  
Is the tenant entitled to an order to change the locks of the rental unit?  
Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary order to reduce the rent for the reduced value of the tenancy arising from the landlord's failure to make repairs?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This tenancy began in November, 2016. The monthly rent is \$1,800.00. The rental unit is a detached home with 3 bedrooms, a den and 1 bathroom. The rental unit also has a backyard with two storage sheds. A backyard deck was available when the tenancy was entered. The tenant testified that she was told by the landlord that a second bathroom is being installed in the rental unit. Additionally, the backyard deck was scheduled to be removed. Because of the her family situation, the tenant required the pre-approval of a social service worker to review and determine if the rental unit is suitable for the family to occupy. The tenant received the approval of the social service worker prior to entering the tenancy agreement.

The parties completed a condition inspection report on October 28, 2016. A copy of the report was submitted into written evidence. The parties checked off that the property was satisfactory in the condition inspection report. The tenant testified that while she signed the condition inspection report the rental unit was not in satisfactory condition at that time. She said that the report was signed with the intention that the rental unit would be brought into accordance with the report shortly thereafter. The tenant said that the rental unit was musty and old. The tenant said that she and her family needed to clean the rental unit for several days in order to make it habitable.

The tenant testified that the backyard of the rental unit required considerable repairs. The tenant said that during the tenancy the landlord has been slow to attend and perform necessary work on the rental unit. The tenant said that the landlord has not completed installation of the second bathroom insider the rental unit as of the date of the hearing. It was several months before the landlord took down the backyard deck to allow access to the yard. Debris from the backyard deck remains on the property. The tenant said that the landlord has only made one of the two storage sheds in the backyard available in late December, 2016. The other remains in use by the landlord.

The tenant said that the landlord does not attend at the rental unit on a timely basis to perform the repairs. The tenant said that the landlord is often several hours late to appointments and this causes a great inconvenience to the tenant who has other responsibilities. The tenant said that the landlord is inflexible with scheduling repairs.

The tenant testified that she believes the landlord enters the rental unit when she and her family are not present. The tenant said that an incident was witnessed by a neighbor. The tenant said that she works from home and has a dog but suspects that the landlord enters the unit when everyone is absent.

The tenant said that the landlord attends on the rental property to perform the ongoing work in the backyard and the installation of the second bathroom. The tenant said that at the landlord's request she leaves the lights on at the rental property so that the landlord has access and can use power tools. The tenant said that she believes her electricity bills are higher as a result of the landlord's use.

The landlord testified that the tenant's behaviour has made the ongoing repair work difficult if not impossible. The landlord said that the tenant has been unreasonable when the landlord attempts to arrange times to access the rental unit to perform work. The landlord testified that because the tenant has blocked her ability to use electricity at the rental unit she has resorted to using battery operated power tools.

The landlord testified that she has not breached the written tenancy agreement during the tenancy term. She said that the rental agreement, signed by the parties on October 16, 2016 is an accurate and complete list of what is included in the tenancy. The landlord said that she signed the condition inspection report, together with the tenant at the start of the tenancy with the understanding that it accurately reflected the condition of the rental unit at that time.

## Analysis

### Tenant's Request for Emergency Repairs, Repairs and the Cost of Repairs

The tenant is seeking an order that the landlord perform repairs and emergency repairs and to recover the cost of emergency repairs made by the tenant. Specifically, the tenant is seeking the landlord renovate and repair the backyard, the storage sheds, and complete the installation of a second bathroom.

The tenant testified that she has not performed any emergency repairs herself that requires compensation. Consequently, I dismiss the portion of the tenant's application for the cost of emergency repairs.

Section 33 of the Act describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems

- in prescribed circumstances, a rental unit or residential property

Fixing the backyard, the storage sheds or installing a second bathroom is not emergency repairs within the meaning of the Act. I dismiss this portion of the tenant's application.

Pursuant to section 32 of the Act, the landlord must provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law and suitable for occupation. I find that there is insufficient evidence that the rental unit conditions require repairs to be made to comply with legal standards or to be suitable for occupation. The tenant testified that the repair she is seeking involves the backyard, and a second bathroom in the rental unit. The tenant said that the primary bathroom is fully functional. The tenant gave evidence that she continues to reside in the rental unit with her family. I find there is insufficient evidence to find that the absence of a second bathroom puts the rental property in a state that does not comply with the health and safety standards required by law. The installation of a secondary bathroom is an improvement to the rental unit which the parties have agreed to, but I find that it is not a repair necessary for the rental unit to be suitable for occupation. I also note that the tenant testified that her social service worker approved of the rental unit as being suitable for the tenant's family. I find the approval to be evidence in support of the position that the rental unit can be occupied without risk to the health and safety of the occupants. Accordingly, I dismiss the tenant's application for a repair order.

#### An order allowing the tenant to change the locks to the rental unit

The tenant has requested authorization to change the locks to the rental unit. The tenant testified that she believes that the landlord enters the rental unit when the tenants are not present. The tenant said that she believes items have gone missing from the rental unit. The tenant said that a neighbor once witnessed the landlord entering the rental unit at a time when the tenant was not at home.

I find that there is insufficient evidence in support of the tenant's application to change the locks to the rental unit. The tenant was unable to provide evidence in support of why she believes the landlord is entering the rental unit beyond a general suspicion. The tenant said that a neighbor witnessed an incident but the tenant failed to have the neighbor appear as a witness or submit a sworn statement from the neighbor. I find that there is insufficient evidence in support of the tenant's suspicions. Accordingly, I dismiss this portion of the tenant's application.

#### An order requiring the landlord comply with the Act, regulation or tenancy agreement

The tenant's application does not clearly articulate which aspects of the Act, regulation and/or tenancy agreement she wishes the landlord to comply with. During the hearing the tenant raised a number of frustrations she has with the landlord and the tenancy to date.

The tenant said that they are seeking an order that the landlord comply with the tenancy agreement and provide the services listed therein. The tenant said that she entered the tenancy agreement based on specific criteria she had arising from her family situation. The tenant said that while it is not expressly listed in the tenancy agreement, it was implied that the landlord would install a second bathroom in the rental unit and make available the two storage sheds in the yard of the rental property. The tenant said that the condition inspection report was signed with the expectation that the landlord would clean and repair the rental unit and that it does not reflect the condition of the rental unit at the time of signing.

I find there is insufficient evidence to demonstrate that the landlord has not complied with the Act, regulations or tenancy agreement so that an order is appropriate. I do not find the tenant's testimony that the signed condition inspection report was signed with the expectation that the rental unit would soon be brought to the satisfactory condition indicated on the form to be credible. A condition inspection records the state of repair and condition of the rental unit at the time of the inspection. Similarly, I find that there is insufficient evidence that the landlord has not fulfilled the requirements of the tenancy agreement. There is little evidence of peripheral agreements or representations. While the tenant may have requests for the tenancy I find that if they are not in the body of the agreement they are not enforceable clauses.

I find that there is insufficient evidence that the landlord and her family are in breach of the Act, regulations or tenancy agreement by failing to attend at the rental unit in a punctual manner. I dismiss the tenant's application for an order that the landlord comply with the Act, regulations or tenancy agreement.

#### Monetary Claim for Damages and Loss

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant has requested a monetary award in the amount of \$7,500.00 for damage and loss. I find that the tenant has submitted insufficient evidence in support of her claim for a monetary award. She has listed, in her Monetary Order Worksheet, estimates that she said were provided to her for the work she believes is required. The tenant simply attributes the quotations to sources such as "Contractor", "Painter" and "Brent". The tenant has provided no written evidence in support of these estimates. She has not submitted receipts, estimates, email correspondence or otherwise supported her claim in any substantive manner. In any event, the tenant testified that she has not incurred costs for renovations. As there have been no losses I find that the tenant is not entitled to an award for damages or loss under this head.

The tenant claims that she incurred costs of \$1,000.00 for carpet cleaning and shampooing. I find there is insufficient evidence in support of the tenant's claim. The tenant has not submitted any receipts, invoices or written evidence to show that there has been any expenditure made to clean the carpets of the rental unit. The onus is on the applicant to show, on a balance of probabilities, that there has been a loss. I find that the tenant has not met the burden of proof and consequently dismiss the tenant's application for damages under this heading.

The tenant claims that the landlord used the electricity from the rental unit when she attended to perform repairs and cleaning. The tenant said that at the landlord's request she left the lights of the rental unit on throughout the day. The tenant claims that amount of \$100.00 for the cost of utilities used by the landlord. I find that the tenant has failed to support her claim with sufficient evidence. The tenant testified that she works from home. As such, I do not find the tenant's testimony that she needed to leave the lights on throughout the day at the request of the landlord to be reasonable. I find it reasonable to expect that the lights would have been on regardless of the landlord's presence when the tenant was at home. The landlord testified that the tenant has blocked her use of electricity at the rental unit and she brings battery powered tools for the work she performs. The tenant did not submit any utility bill to show the purported increased usage, little evidence of the hours that the landlord attended at the rental unit and the work performed, and insufficient evidence to show how the monetary figure claimed was calculated. Consequently, I dismiss the tenant's claim under this heading.

The tenant makes a claim for a monetary award of \$2,500.00 for failure to provide what was advertised, unsafe condition, quality of living. While the tenant did not clearly articulate her claim, it appears that the tenant is claiming for loss of value of the tenancy.

She said that the landlord failed to provide the rental amenities such as the backyard and storage sheds and consequently she and her family have been unable to enjoy the rental unit. I find insufficient evidence has been submitted in support of the tenant's claim. I find the condition inspection report signed by the parties to be evidence in support of the position that the rental unit was safe to be occupied. The tenant testified that social services inspected and approved of the rental unit prior to the tenant entering the tenancy agreement. I find that the approval further supports the landlord's position that the rental unit was safe. I accept the evidence of the parties that the tenant viewed the rental unit prior to entering the tenancy agreement and was aware of the lack of a second bathroom as well as the ongoing work being done in the backyard. I find that the tenant was aware of the condition of the rental unit and approved of the condition as evidenced by the signed condition inspection report. I find insufficient evidence that there were undisclosed deficiencies or dangers in the rental unit.

Furthermore, I find that the tenant has not provided sufficient evidence to show that there has been a loss or impact due to the condition of the rental unit. I accept the undisputed evidence of the parties that the tenant continued to reside in the rental unit and had full use of the facilities within. I find that the ongoing construction work in the backyard and the addition of a second bathroom had minimal impact on the day to day lives of the tenant's family. The tenant entered

a tenancy agreement for a rental unit with one bathroom, and one was provided. The landlord's construction of a second bathroom is an upgrade which is not a material term of the tenancy agreement. I find little evidence to show that the work on the backyard deck had a significant impact on the tenancy or the tenant's ability to enjoy the rental unit. Accordingly, I dismiss this portion of the tenant's application.

#### Analysis- Rent Reduction

The tenant seeks compensation for loss in the value of the tenancy due to the ongoing work by the landlord. Section 67 of the Act read in conjunction with paragraph 65 (1)(f), allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

The parties have testified that the backyard deck was torn down recently and due to the work, it limited the tenant's ability to use the backyard. I accept the evidence of the parties that the tenant had access to one of the storage sheds since December, 2016 and the other is still being utilized by the landlord.

I find that the tenant was entitled to use of the backyard under the tenancy agreement. I find the tenants have demonstrated to the extent required, that until recently they had limited access to their backyard and the storage sheds, a service and facility that the landlord committed to provide to them when they entered into this tenancy agreement.

Residential Tenancy Policy Guideline 16 provides guidance in determining the value of the damage or loss under such circumstances. The tenant suggests an amount of \$3,500.00 to \$4,200.00, the equivalent of \$500.00 to \$600.00 for each of the 7 months when the backyard was inaccessible, would be appropriate. The tenant provided little evidence regarding the loss of use of the backyard. The tenant testified that she expects that her children and her dogs would have made use of the backyard area but provided little details. The tenant said that the backyard area is quite large but little other information regarding how the tenant and her family would normally use the backyard, the frequency of use, or the impact their loss has had on them. I find the tenant has not shown on a balance of probabilities that the loss of use of the backyard and the sheds had a significant effect on their enjoyment of the rental unit. I find that the suggestion of \$500.00 to \$600.00, close to a third of the monthly rent, to be excessive under the circumstances.

It is undisputed that the tenant lost the use of the backyard due to the landlord's construction work. Under the circumstances, I am issuing a monetary award which reflects that the tenant did suffer a nominal loss in the value of the tenancy agreement. Based on the evidence before me I find that the loss was not significant, had no major impact on the tenant's daily routine and the tenant was able to enjoy the rest of the rental unit. Under the circumstances, I find that the monetary award should reflect a smaller portion of the monthly rent and a monetary award for loss of \$315.00, \$45.00 for each of the 7 months when the backyard was inaccessible, to be appropriate. This reduction in the value of the tenancy equates to roughly 2.5% of the

\$1,800.00 in monthly rent the tenant has been paying, an amount which I find to be adequate given the scarcity of evidence the tenant presented in support of their application.

In coming to this determination, I have also taken into consideration that much of the 7 month period of entitlement would be at a time of the year when the winter weather would not typically be conducive to the tenant making use of their backyard. I do not find the tenant's testimony that because of their province of origin the tenant and her family would have regularly utilized the backyard even in incremental weather conditions to be reasonable. .

I issue a one-time monetary award to the tenant for loss of value of the rental agreement of \$315.00 to June 7, 2017, the date of the hearing.

I find that it is premature to make an order regarding future rent reduction or damages as I understand that there is ongoing repair and construction. I dismiss the tenant's application for loss arising after the date of the hearing, June 7, 2017, with leave to reapply.

#### Conclusion

As this tenancy is continuing, I allow the tenant to recover his \$315.00 filing fee by reducing the monthly rent by that amount on the next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$315.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the balance of the tenant's application.

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: June 9, 2017

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Residential Tenancy Branch