



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MNDC MNR OLC PSF RR

### Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- an Order directing the landlord to reduce rent for their failure to provide facilities agreed upon pursuant section 65 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*;
- a Monetary Award for emergency repairs and for money owed for loss under the tenancy agreement pursuant to section 67 of the *Act*;
- a return of the Filing Fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant appeared at the hearing. Both parties were provided a full opportunity to be heard, to present testimony, to make submissions and present evidence.

The landlord confirmed receipt of the tenant’s application for dispute resolution after having received his application for dispute and evidentiary package in person on August 14, 2017. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been duly served under the *Act*.

### Issue(s) to be Decided

Should the landlord be directed to comply with the *Act*?

Should the landlord reduce the rent for failing to provide facilities agreed upon?

Is the tenant entitled to a monetary award?

Can the tenant recover the filing fee from the landlord?

### Background and Evidence

Testimony was presented at the hearing by the tenant that this tenancy began on April 1, 2017. Rent is \$3,000.00 per month, and a security deposit of \$1,500.00 collected at the outset of the tenancy continues to be held by the landlord.

The tenant explained that he was seeking a Monetary Order of \$1,800.00 because the landlord had failed to provide all of the residents with keys to the rental home, and because the tenant and his roommates did not have access to the garage as per their agreement with the landlord. Furthermore, the tenant wished to recover \$397.00 for a plumbing bill which he said that he was forced to pay.

At the hearing the tenant explained that he currently rents an entire home with three other people. Between these four residents, the landlord only supplied them with two keys. The tenant said that despite numerous efforts to contact the landlord, he and his roommates have been unable to obtain a third and fourth set of keys from the landlord.

The landlord explained at the outset of the hearing she has only had two sets of keys. She said that she has had troubles finding additional keys because they are very unique and are designed for increased security. The landlord continued by stating that she has attempted to solve the problem by installing a hide-a-key lock box for the tenants.

The tenant explained that through his own efforts he was able to contact the company who manufactured the lock and key, and that he provided this information to the landlord. A copy of the conversation via text message between the tenant and the landlord displaying this conversation was provided to the hearing as part of the tenant's evidentiary package.

In addition to a monetary award for having an insufficient number of keys, the tenant is seeking a monetary award for not having use of the garage. The tenant, along with his witness A.L. explained that it was their understanding that they would have "use of the property" which they believed to mean use of the garage. The landlord acknowledged that the garage was presently full of debris; however, she explained that these items were from the previous tenant and that she had agreed to hold them for this person. She said that efforts were being made to remove the items, but that the previous tenant had asked her to hold on to certain items. The landlord stated that she had explained to the tenant at the start of the tenancy that the garage would be occupied by the past tenant's belongings.

The final aspect of the tenant's monetary claim concerns an invoice of \$397.00 that he was forced to pay in order to have a kitchen sink repaired. A copy of the invoice produced as part of the tenant's evidentiary package describes the extent of the work which was performed. The tenant explained that following the repairs, the plumber informed him and his roommates that the plumbing work was the result of debris in the pipes which would have been present for a long period of time. The tenant continued by noting that they had only been in the rental unit for less than a month, therefore it was impossible that they could have caused the blockage.

The landlord argued that these repairs were unnecessary as she had already spoken with the tenant about his concerns and had made arrangements to repair the sink. She said that her daughter had anticipated coming to the house at 9:00 P.M. on the night that the repairs were made by the plumber, because her daughter was planning on fixing the sink on her own. Additionally, the landlord questioned whether the repairs were necessary, and firmly believed that the blockage had resulted from the actions of the tenant and his roommates.

### Analysis

*Residential Tenancy Policy Guideline #1* examines the issues surrounding the responsibilities of landlords and tenants regarding residential premises. Guideline number 1-6 states, "The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as a recreational or laundry room. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense."

I find that the landlord has failed to provide keys to all persons party to the tenancy agreement. The landlord is therefore ordered to have two extra keys cut. Should the landlord fail to have these additional keys cut by November 24, 2017, the tenants may apply to the *Residential Tenancy Branch* for further relief.

In addition to extra keys, the tenant was seeking an Order directing the landlord to allow access to the garage and for monetary compensation related to the loss that he and his roommates have suffered. I find that insufficient evidence was presented at the hearing showing that the tenant or his roommates were entitled to use of the garage. No copy of the tenancy agreement was submitted to the hearing, clarifying exactly what the tenant was entitled to under the agreement. Furthermore, tenant A.L., explained that it was her understanding that the landlord had allowed them access to "use of the property." This is a vague description of their entitlements. The landlord said that at the beginning of

the tenancy she told the tenants she was using the garage to store the belongings of a former tenant, and that tenant the current and his roommates would have access to the garage when the former tenant removed their items from the garage. This is a reasonable position for a landlord to adopt and I find that little evidence was presented to rebut the landlord's position. I decline to make an Order directing the landlord to allow the tenant's access to the garage at this time.

The final aspect of the tenant's application concerns an application for a monetary award of \$1,800.00 for the inconvenience of not having keys for all roommates, for the inability of the tenant and his roommates to use the garage and for an invoice that the tenant received from a plumber for work that was necessary to relieve an issue with the kitchen sink.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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. In this case, the onus is on the tenant to prove his entitlement to a monetary award.

The tenant is seeking \$100.00 per month from the outset of the tenancy to October 2017, for loss of the garage and because the landlord only provide the tenant and his roommates 2 keys to the rental home. Additionally, the tenant wishes for reimbursement of \$397.00 for plumbing repairs.

As I have already dismissed the tenant's application asking for the landlord to be directed to comply with the *Act*, and to allow him access to the garage, I will not be awarding any compensation for loss of the garage. I will instead focus on his loss of access to the unit due to having an insufficient number of keys and the cost of the plumbing.

Oral testimony presented at the hearing by the landlord explained that she could not provide all four occupants with keys to the rental unit, because she only had two keys in her possession. Both parties agreed that these were specialized keys which were difficult to replicate. As part of the tenant's oral testimony and evidentiary package, the tenant explained that he contacted the lock manufacturer and could have keys cut for

\$65.00. The tenant continued by stating that he provided this information to the landlord, but the landlord had failed to act on it. An examination of the text messages provided to the hearing demonstrates that the landlord was in receipt of the locksmith's contact information on April 18, 2017. I find that the tenant and his roommates have been without the use of the proper number of keys for nearly the entire period of their tenancy. I find that the tenant has suffered a loss from the tenancy and is therefore entitled to a monetary award for this loss.

The tenant had requested \$100.00 per month as compensation for this loss. I find this number to be excessive as the tenant did not explain how he arrived at this figure. I find an award of \$10.00 per month to be more appropriate, as per the directives of *Residential Policy Guideline #16*. This *Guideline* explains, "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. The tenant is therefore awarded \$10.00 per month, for the six period of May 2017 to October 2017. The tenant is entitled to a monetary award of \$60.00.

The final aspect of the tenant's application involves reimbursement of \$397.00 for plumbing repairs. *Residential Tenancy Policy Guideline #1* states, "the Landlord is responsible for ensuring that rental units and property...meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property...the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or rise...The tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site."

This *Guideline* continues by explaining, "Reasonable wear and tear refers to natural deteriorations that occur due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

As part of the tenant's evidentiary package, the tenant included a letter from the plumber detailing the scope of the work which was undertaken. The landlord argued that these repairs were unnecessary because her daughter was going to attend to the residence to complete the work herself. The tenant said that the landlord's daughter wished to attend the property at an hour which was unreasonable, and that it was impossible for them to have caused the issues with the plumbing because he and his

roommates had only been in occupation of the home since April 2017, while the problem was identified on April 30, 2017.

Based on the evidence presented at the hearing, I find that the landlord is responsible for half of the invoice related to the plumbing. The tenant had been in occupation of the rental unit for 1 month, therefore it is reasonable to conclude that he had little influence on issues related to the drain, and that they were the result of normal wear and tear associated with a rental property. I do however find it difficult to understand why if the issue was so pressing the tenant would not allow the landlord access to the rental unit despite the late hour of their arrival. Furthermore, based on the text messages submitted to the hearing, it does not appear as though further efforts to contact the landlord to rectify the situation were taken, prior to the tenant contacting a plumber. It would be unequitable to place the responsibility of the entire invoice on the landlord, after the tenant had gone ahead and called a plumber when the landlord attempted to fix the sink. For these reasons, I find that the tenant is entitled to a return of half of the plumbing invoice, or \$198.50.

As the tenant was partially successful in his application, he may recover the \$100.00 fee from the tenant.

I will provide the tenant a monetary award in the amount of \$358.50. Should the landlord agree, this amount may on one occasion, be held against a future rent payment, in lieu of the payment of a monetary order which will be supplied to the tenant along with this decision.

### Conclusion

The landlord is directed to provide the tenant with two further keys to the rental home by November 24, 2017.

I issue a monetary order in the tenant's favour in the amount of \$358.50 as follows:

Item	Amount
Section 67 compensation for insufficient keys	\$60.00
Return of ½ of plumbing invoice (397.00/2 = 198.50)	198.50
Return of Filing Fee	100.00

<b>Total =</b>	<b>\$358.50</b>
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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.

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: November 1, 2017

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Residential Tenancy Branch