



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, LAT, MNDCT, MNRT, OLC, PSF, RP, RR

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to the landlord to provide services or facilities required by law 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. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

## Preliminary Issue

At the outset of the hearing both parties confirmed that the landlord had sold the property and that the new owners take possession on this date. In the result, the tenants testified that they are only seeking to pursue the monetary claim. Based on the information provided, I hereby dismiss the tenants application in its entirety save and

accept for the monetary claim portion. The hearing proceeded and completed on that basis.

### Background and Evidence

BW spoke on behalf of both tenants and gave the following testimony. The tenancy began on September 1, 2017 and is on a fixed term that ends on August 31, 2017. The tenants are obligated to pay \$1700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$850.00 security deposit. BW testified that the tenancy and the unit was not as promised by the landlord. BW testified that the unit had many deficiencies and that the landlord did not advise them the property was for sale until after they had moved in. BW alleged the following issues: that the office was unusable and it was cold and didn't have heat, the mattress provided was not suitable and that the tub drain was very slow and required cleaning before every use, that there was insufficient hot water, the tenants had to buy Draino to unclog the drain, the kitchen lacked a hood fan over the stove and that they had to cook with the door open. The tenants are seeking \$2616.00 for this portion of their claim. The tenants feel that all of these breaches fall under section 27 of the Act and have outlined their claim as such.

BW testified that the tenants were not provided the quiet enjoyment of their home because of the following: The time and frustration in dealing with the landlords realtor, having to cancel work and lost income so that they could be present during showings, stress and anxiety caused by illegal entries and to involve the police, no hood fan over the stove, having no heat for a week, positioning of routers causing health concerns, tenants below asking to move the routers and noise issues from the tenants below. The tenants are seeking \$2015.00 for this portion of their claim. The tenants feel that all of these breaches fall under section 28 of the Act and have outlined their claim as such.

The landlord gave the following testimony. The landlord testified that he adamantly disputes the tenants' claims and is at a loss as to why there is a hearing. The landlord testified that he had no issues with CP and got along well with her but most if not all of the issues arose from BW. The landlord testified that any and all issues were addressed in a reasonable and timely manner. The landlord testified that he delivered what was explained to CP and advertised, and advised her that the home was for sale prior to the tenants moving in. The landlord testified that BW is difficult to understand and to deal with and much of the issues are a result of not being able to communicate with him.

## Analysis

It was clear to me that BW and PK have an acrimonious relationship. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlord to be a more credible witness than BW. The landlord provided consistent, logical testimony which was supported with documentary evidence where available. I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party.

Based on the foregoing, where the evidence of the parties clashed I found that the landlord's version to be more credible and consistent with how a reasonable person would behave.

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 arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants claim and my findings as follows. For absolute clarity and ease of reference, I have grouped the claims as presented and submitted to me by the tenants in two portions. I have considered all the relevant sections of the *Act*, regulations and guidelines in coming to this decision. It is worth noting that although the tenant submitted a monetary order worksheet, it did not reflect the claim as made and much of

the tenant's documentation was disjointed and lacked clarity. The grouping of the two claims is a reflection of what the tenant presented during the hearing and how the landlord responded.

"Section 27 compensation" - \$2616.00

BW provided a calculation to come to the above amount but chose random amounts without providing the details as to how he came to those numbers as the appropriate compensation. In addition, BW testified that he had numerous phone conversations and in person meetings with the landlord to advise him of those concerns. The landlord disputed that and stated that whenever an issue arose, he dealt with it. The landlord testified that the den was not a den but a storage area, and that the bed provided was the one that was in the ad and of a good quality. The landlord testified that the all of the other issues submitted by the tenant were addressed and corrected or were items that were a non-issue in the first place. The tenants claim on this portion of their application fails as they have not satisfied all four grounds as listed above, specifically; how they arrived at the actual number to prove their actual loss and what steps were taken to mitigate the loss. On both those grounds I find that the tenants have not provided sufficient evidence to meet the burden of proof; on a balance of probabilities and I must dismiss this portion of their claim.

"Section 28 compensation" - \$2015.00

BW testified that many of the issues in this part of their claim arose from his dealings with the landlords' realtor. The landlord testified that BW occupied one of four units in the home was the only one to have any difficulties. The landlord testified that despite all of the alleged issues the tenants have extended their lease on two occasions. The landlord testified that much of what the tenant did was "self-inflicted" by attempting to be at each and every showing. The landlord testified that notice was given and that the realtor would show the unit and lock up when she was done. The landlord testified that the tenant involved the police for "absolutely no reason" and that the tenant would find the smallest issues to complain about.

The landlord testified that the issue with the modems was an easy fix and really a non-issue, however the tenant was concerned about radiation being emitted from them. As noted in the above claim, BW provided a calculation to show how much he was asking for but failed to provide the specifics of how he came to that conclusion and how it is the appropriate amount of compensation. The tenants claim on this portion of their application fails as they have not satisfied all four grounds as listed above, specifically; how they arrived at the number to prove their actual loss and what steps were taken to mitigate the loss. On both those grounds I find that the tenants have not provided

sufficient evidence to meet the burden of proof; on a balance of probabilities, and I must dismiss this portion of their claim.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 01, 2018

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Residential Tenancy Branch