



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OLC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 11, 2018, and June 8, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for compensation for loss or other money owed; and,
- Recovery of the cost of the filing fee.

Both the Landlord and the Tenant attended the hearing and provided testimony. The Landlord brought with him an agent, and a witness. Both sides confirmed receipt of each other's documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant applied for an order for the Landlord to comply with the Act. However, both parties agree that the tenancy has already ended. As such, I find this portion of the Tenant's application is moot, and I dismiss it, without leave to reapply.

### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

## Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started on July 6, 2016, and ended on December 15, 2016, the day the Tenant left the rental unit. The tenancy agreement provided into evidence indicates that rent was \$2,150.00.

The Tenant is seeking compensation because he stated he had to leave the rental unit early because of all the issues. The Landlord alleges that the Tenant was looking for reasons to get out of his lease, and not pay rent, and his entire claim on this matter is frivolous. The Tenant is seeking compensation as follows:

### *Overpayment of Utilities*

The Tenant stated that the house consists of 3 units, and are not legally separated and permitted. The Tenant stated that he was paying utilities for the whole house and that the Landlord reduced rent by \$100.00 (to \$2,050.00) in order to compensate him for managing the utility billing (gas and electricity). The Tenant is seeking to recover \$552.00, which is half of the total utility bills for the duration of the tenancy. The Tenant stated that he paid for the full amount of the utility bills but got a \$100.00 a month rent rebate from the Landlord to compensate him for the usage of the other Tenants, and for managing the billing. The Tenant does not feel the setup was fair because he paid more than his share.

The Landlord stated that he put a lot of thought into what a fair split would be for the portion of the utility bills. The Landlord stated that the coach house is small (450 sq ft), as is the basement suite (750 sq ft). The subject unit is the main portion of the house, and is about 1,900 sq ft. The Landlord stated that the Tenant ended up paying around 46% of the total utility bills, and his unit occupied more than this proportion of the square footage, so he actually got a really fair deal. The Landlord stated that he feels he is being fair by offering the Tenant \$100.00 off his rent in order to compensate him for paying utilities for the other units.

### *Loss of Quiet Enjoyment*

The Tenant stated that he is looking for compensation for a loss of quiet enjoyment for several items. The Tenant is looking to recover \$200.00 per month for the 6 months that he was in the rental unit for the following reasons:

- 1) Voices/Noise – the Tenant stated that the person living below him came to his door and complained about the noise. The Tenant stated that he was made aware of the basement suite below the rental unit, but was not told about the poor sound insulation. The Tenant stated that he could hear phone calls and TV sounds from below, and the Tenant below could hear him walking around. The Tenant stated that he had to wear slippers in his house to keep foot traffic noise down. The Tenant stated that these noise issues caused a loss in his quiet enjoyment.

The Landlord brought in a witness (the person living below the Tenant), and he testified that the house is reasonably sound proof, and he only complained once of the sound in the upper unit. The witness stated that there are portions of the house that have hardwood floors and some noise is expected. The witness stated that he is never cold in his unit and he only ever heard the odd voice from upstairs.

- 2) Food Odours – The Tenant stated that the tenancy agreement is unfair in that it limits his use of “exotic spices” and his ability to cook the food he wanted without it impacting the lower unit. The Landlord stated that he put a note in the tenancy agreement regarding smells because some foods are strong, and since it is a shared building/property, it is good to point this out to the Tenant.
- 3) Front stairs in disrepair – The Tenant stated that the front stairs were in disrepair and the Landlord never fixed them. The Tenant stated that he could not use the stairs properly and he feels they were unsafe. The Tenant provided photos of the front stairs showing a crack in the edge of the wood. The Landlord stated that the crack the Tenant is pointing out is purely cosmetic, and the only thing the stairs needed was some paint. The Landlord pointed to a photo in evidence which shows the stairs supporting multiple people at one time with no issue.
- 4) Leak over front porch area/electrical hazards – The Tenant stated that he was afraid to use the front stairs and porch because there was a water leak on the edge of the roof, near an electrical receptacle in the soffit. The Tenant pointed to

photos of this portion of the roofline where the electrical receptacle was, and noted that there were water stains in and around the plug. The Tenant stated that this was an electrical hazard and it impacted his use of the porch. The Tenant also stated he could not use the front porch when it rained because the leak and the outlet were right near the entrance.

The Landlord stated that he had an electrician inspect this issue and he provided a letter to support that in the electrician's professional opinion, there was "no potential electrical shock hazard" in the soffit area. The electrician also noted that there was a water leak near the gutter but there was no water touching the receptacle. The Landlord feels this claim is fabricated and the leak from the roof was very minor and has been exaggerated.

- 5) Heat loss issue – the Tenant stated that there was air leaking through all the door seals and there was lots of heat loss in the rental unit, especially in the lower area. The Tenant stated that this issue became worse in the winter when it was colder. The Tenant stated that he was unable to heat the area near the lower set of French doors above 18 degrees. The Tenant stated that the Landlord never came to look at the doors to check their seals.

The Landlord stated that he attended the rental unit to check on the doors but since the Tenant was not home, he could not actually get inside. The Landlord stated that he checked all the seals on the doors very closely from the exterior and noted that they were all in good shape. The Landlord stated that he has not had any complaints about this issue prior to this hearing from previous tenants, nor has he had any complaints about this from the subsequent tenants. The Landlord stated that the doors were in good shape, and that any air leak in the doors would be minimal and normal for these types of doors (double and French door style).

- 6) Vacuum dysfunction – The Tenant stated that there was a central vacuum system that did not work very well. The Tenant stated that it didn't have very strong suction, so he had to buy his own vacuum, which impacted his quiet enjoyment of the unit.

The Landlord stated that this claim is ridiculous as the vacuum cleaner worked, and still works fine. The Landlord stated that the Tenant clearly didn't figure out how to use it properly.

- 7) Carpet smell – The Tenant stated that there were a few spots on the carpet which, after a couple months of living in the rental unit, began to smell and darken in color. The Tenant pointed to some photos to show that there were several carpet stains and he believes these were caused by moisture, and potential mildew/mould. The Tenant stated that he could not have company over because the carpet spots smelled badly. The Tenant pointed to an email from the Landlord to the carpet company as evidence that there was mould. The Landlord stated that this email was simply to have the spots looked at, and it does not prove any mould existed.

The Landlord stated that there were a couple of stains on the carpet, and they are clearly noted in the condition inspection report, provided into evidence. The Landlord stated that the Tenant signed off on this report and acknowledged that there were some stains. The Landlord stated that he is not trying to blame the Tenant for the stains, and he never expected the Tenant to fix these stains. The Landlord stated that some of the stains are the size of a toonie, and this whole issue is being exaggerated. The Landlord stated that he had the carpets cleaned before the Tenants moved in, and he told the Tenant that he could have them cleaned again if he wanted at his own expense. The Landlord stated that there have never been any proven mould/mildew issues with the carpets. The Landlord stated that the only reason that some of the stains may have darkened is because the Tenant didn't figure out how to use the vacuum, so the spots collected more dirt.

### *Curtain Rods and Door Alarms*

The Tenant stated that he installed a curtain rod in the bedroom and he stated that the Landlord promised to pay him for this. The Landlord stated that he never said he would pay for this item, and only told the Tenant that he could install one if he wanted, but that he would have to patch the holes in the drywall if he removed the curtains prior to moving out. The Tenant is looking for \$40.00 to compensate him for the curtain because he left it behind and was never paid by the Landlord.

The Tenant stated that he installed 3 door contact alarms in the house because he was not sure if the previous tenant still had keys or not. The Tenant stated that he left these installed and is looking to recover the cost of them (\$30.00). The Landlord stated that he never agreed to pay the Tenant for these and the Tenant could have taken them with him when he left.

## Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

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.

I first turn to the following issue:

### *Overpayment of Utilities*

I acknowledge that the Tenant had to put the gas and electricity in his name and the Tenant is asking for 50% of all bills paid for the duration of the tenancy in compensation. In making my findings on this matter, I turn to Residential Tenancy Policy Guideline #1, which states the following:

#### **Shared Utility Service**

A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

Further, I turn to Residential Tenancy Policy Guideline #8, which states the following:

### **Unconscionable Terms**

Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable.

I find the manner in which the Landlord laid out the utility billing is unconscionable, as per the above noted policy guidelines. However, I note that the Landlord made reasonable attempts to compensate the Tenant for managing the utilities, and also splitting the billing in a reasonable manner. The Landlord explained that he considered square footage and past utility bills to arrive at a reasonable amount. The Tenant does not feel the setup was fair and wants 50% of all bills paid as compensation. However, I find there is insufficient evidence from the Tenant to establish what the actual amount of utilities payable by his rental unit should have been, such that I could find what, if any, amount is due to the Tenant. I find the Tenant has not sufficiently proven the value of the loss, or what he should be entitled to on this matter. I find the Tenant's request to receive 50% back for all utilities he paid is unreasonable, since he has already received a rent reduction of \$100.00 per month to compensate him. Since I have found the utility portion of the rental agreement is unconscionable, I find the Tenant is entitled to some compensation. However, since the Tenant has not sufficiently demonstrated what this amount should be, I find it more appropriate to award a nominal award in the amount of \$50.00.

### *Loss of Quiet Enjoyment*

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the Landlord's right to enter the rental unit in accordance with section 29;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The bulk of the Tenants testimony was surrounding a loss of enjoyment and use of the property due to deficiencies. In consideration of these issues, I turn to the following two Residential Tenancy Branch Policy Guidelines:

The Residential Tenancy Branch Policy Guideline #16  
(Compensation for Damage or Loss)

*Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:*

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- ***Loss of a service or facility provided under a tenancy agreement;***
- ***Loss of quiet enjoyment;***
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and,*
- *Damage to a person, including both physical and mental*

*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*

The Residential Tenancy Branch Policy Guideline # 6  
(Entitlement to Quiet Enjoyment)

*A Landlord is obligated to ensure that the Tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*

The Tenant stated that he is looking for compensation for a loss of quiet enjoyment for several items. The Tenant is looking to recover \$200.00 per month for the 6 months that he was in the rental unit. With respect to these issues, I find the following:

- 1) **Voices/Noise** – I acknowledge that there was likely some sound transfer between the unit, as there was a person renting the unit directly below the Tenant. The parties disagree on the level of noise that was present. The Tenant alleges that he had to tiptoe around and could not live a normal life because of how much noise transferred between the upper and the lower unit. He also complained about the voices and tv noise. However, the person living below also attended as a witness for the Landlord and testified that there was very little issue with any noise, and it was just the one occasion that he complained about foot traffic. After



considering the totality of the evidence on this matter, I find the Tenant has not sufficiently demonstrated that there was an issue with noise such that he would be entitled to compensation for loss of quiet enjoyment. The Landlord has provided more compelling evidence, via witness testimony, that there wasn't much of a noise transfer issue.

- 2) Food Odours – The Tenant stated that he was not able to cook certain foods because of poor ventilation, and that this impacted his enjoyment of the unit. I turn to the tenancy agreement provided into evidence which indicates that the Tenant acknowledged that he would limit the use of exotic smelling foods as they can leave lingering smells. Given that this unit is in close proximity to other rental units, I find it is reasonable for the Landlord to ask the Tenant to be mindful of strong smelling foods. Although the Tenant stated he lost enjoyment of the unit because he could not cook freely, I find there is insufficient evidence that there was an issue with the ventilation such that the Tenant would be entitled to compensation. Further, the Tenant agreed to be mindful and limit the use of exotic cooking smells. This identified up front that the Tenant should be mindful of cooking aromas.
- 3) Front stairs in disrepair – The Tenant stated that the front stairs were in disrepair and the Landlord never fixed them. However, the Landlord stated that the stairs were structurally sound and only needed some paint. The Tenant provided a photo of the cracks in the stairs, but the Landlord stated that this crack was a surface crack and also provided photos of several people standing on the porch without issue. Based on the evidence before me, I find it more likely than not that the crack in the stair was superficial and did not impact the usability or safety of the stairs, as it can clearly support several people at once. I do not find the Tenant has sufficiently demonstrated that he was unable to use the stairs for this reason or that he should get compensation for loss of use.
- 4) Leak over front porch area/electrical hazards – The Tenant stated that he lost the use of the front porch, especially when it rained because there was a roof leak near the soffit/gutter. Although the Tenant stated this was an electrical hazard, I find the Landlord's evidence more compelling on this matter. The electrician indicated there was no hazard. I find the Tenant has provided insufficient evidence to show that there was an electrical hazard such that he would have lost the use of the porch. I decline to award the Tenant compensation for this matter.

With respect to the Tenant's claim to the leaky gutter/soffit, I acknowledge there may have been some amount of water leaking through, as evidenced by some of the photos of the soffit (showing actual water dripping behind the gutter). The Tenant stated that this leak limited his use of the front entrance when it rained. In consideration of the Tenant's loss of use of his front door, on some occasions when it was raining heavily, I find he is entitled to some compensation for this issue. However, since I am not satisfied the issue was as severe as the Tenant is alleging I find a nominal award of \$50.00 for this issue is fair.

- 5) Heat loss issue – I acknowledge that the Tenant stated that there was air leaking through all the door seals and there was lots of heat loss in the rental unit. However, the Landlord stated that he came to look at, and inspect, the doors and he noted no issues with the perimeter seals. Given that these are double doors and French doors, and there are inherently more perimeter seals and potential cracks than would be present on a single door, I find some amount of air loss is normal for this style of door. Ultimately, I find there is insufficient evidence that the functionality of the doors were such that it caused an abnormal amount of heat loss such that the Tenant should be compensated for this issue.
- 6) Vacuum dysfunction – The Tenant stated that there was a central vacuum system that did not work very well, which impacted his quiet enjoyment of the unit. The Landlord stated that the vacuum works fine and the Tenant never bothered to figure out how to operate it properly. Although the Tenant was not happy with the suction of the vacuum, it appears the vacuum was still operational, and I find there is insufficient evidence that the condition or state of the vacuum was such that the Tenant is entitled to compensation for this matter.
- 7) Carpet smell – The Tenant stated that there were a few spots on the carpet which, after a couple months of living in the rental unit, began to smell and darken in color. The Tenant pointed to some photos to show that there were several carpet stains and he believes these were caused by moisture, and potential mildew/mould. The Tenant stated that he could not have company over because the carpet spots smelled badly.

The Landlord stated that there were a couple of stains on the carpet, and they are clearly noted in the condition inspection report, provided into evidence. The Landlord stated that the Tenant signed off on this report and acknowledged that

there were some stains. The Landlord stated that there have never been any proven mould/mildew issues with the carpets. The Landlord stated that the only reason that some of the stains may have darkened is because the Tenant didn't figure out how to use the vacuum, so the spots collected more dirt.

Having reviewed the evidence and testimony on this matter, I find the Tenant has failed to provide sufficient evidence that the stains on the carpet were from mould/mildew. I find the presence of mould/mildew remains unproven. The inspection report shows that stains were present. I find it reasonable to expect that some of these types of stains would darken with age, as more dirt is embedded and it doesn't necessarily indicate mould. Further, I find the Tenant has failed to sufficiently demonstrate that the carpets would have been the source of any smell he was detecting. As such, I find the Tenant has failed to sufficiently demonstrate that the carpets stains caused a loss of enjoyment, or that he should be entitled to compensation on this matter.

#### *Curtain Rods and Door Alarms*

Although the Tenant installed these items and wants to be reimbursed for them, I find there is insufficient evidence that the Landlord agreed to pay the Tenant for these items. It appears the Tenant installed the curtains by choice, and he could have taken them with him, if he wanted to patch the holes left by their installation. It also appears the Tenant installed the door alarms by choice, and I am not satisfied the Landlord should be responsible for paying for these amounts. Further, there is insufficient evidence to show the Landlord agreed to pay for the door alarms, and it is unclear why the Tenant did not take these with him if he wanted them.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. However, since the Tenant was largely unsuccessful for the majority of his claim. I decline to order the Landlord to repay the \$100.00 fee that the Tenant paid to make this application for dispute resolution.

Pursuant to section 67 of the Act, I grant the Tenant a monetary award of \$100.00 for loss of use of front porch during rainy periods; and for the Landlord's failure to set up the utilities in an acceptable manner.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$100.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: June 08, 2018

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Residential Tenancy Branch