



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

ERP FFT MNDCT OLC PSF RP RR

### Introduction

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;
- 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;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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 tenant was primarily represented by her agent DC (the "tenant"). The landlord primarily spoke on his own behalf with assistance.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution, amendment to the application and evidence. The tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimony of the parties I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Should the landlord be ordered to make repairs to the rental unit?

Should the tenant be authorized to reduce rent for repairs and services not provided?

Should the landlord be ordered to provide services or facilities?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began on February 25, 2018. The monthly rent for the tenancy is \$550.00 payable on the first of the month.

The tenant says that the rental unit is in need of repairs including painting and retiling of the bathroom walls. The tenant submitted into documentary evidence some photographs of the rental unit as well as written submissions. The tenant testified that the landlord failed to provide a written tenancy agreement or a condition inspection report at the start of the tenancy.

The tenant seeks a monetary award in the amount of \$519.80 for the following items:

Item	Amount
Cleaning the Apartment	\$123.00
Developing Photographs	\$21.80
Loss of Quiet Enjoyment (1/2 month's rent)	\$275.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$519.80</b>

The tenant said that they had to take time off of work to clean the rental unit at the start of the tenancy. The photographs were developed in pursuit of their present application. The tenant writes in their submission that the blinds in the rental unit will not close causing loss of reasonable privacy, stress and disturbed sleep.

The landlord disputes the tenant's claims. The landlord submitted written submissions saying that the tenant chose to take possession of the rental unit early and has not allowed the landlord to make repairs or clean the suite prior to the tenant moving in.

### Analysis

Pursuant to Residential Tenancy Rules of Procedure 6.6 the onus to prove their claim on a balance of probabilities rests with the party making the claim. All of the various relief that comprise the tenant's application arise from the tenant's claim that the rental unit is in a state of disrepair due to the landlord's failure to abide by the *Act*, regulations and tenancy agreement.

I find that there is insufficient evidence to conclude that there was a breach by the landlord that gives rise to the tenant's claims. I found that much of the tenant's testimony was evasive,

rambling and focused on matters unrelated to the present application. I find the photographs and receipts submitted by the tenant to be of limited value. The tenant gave testimony on the expertise of the individuals who provided written witness statements for the landlord as well as focusing on the minutiae of documents. The tenant made submissions regarding what they believe the rent ought to be because of the layout of the suite compared to others in the rental building. I find that the tenant's submissions individually and cumulatively do not show that there was a breach by the landlord that would give rise to a claim.

The tenant gave undisputed testimony that they took possession of the rental unit on February 25, 2018. I find that in taking possession of the rental unit early the tenant prevented the landlord the opportunity to make repairs and clean the suite. Therefore, any issues that arise as a result of the condition of the rental unit stem from the early possession and are not attributable to the landlord.

The tenant chose to take possession of the rental unit as it was when they moved in before the landlord had the opportunity to make necessary preparations. The tenant cannot make a claim for cleaning, repairs or maintenance that stem as a result of their preventing the landlord the time to undertake those repairs and cleaning. The tenant has failed to establish a basis for their application as I find that all of the aspects of their claim arise from their own actions rather than that of the landlord. Consequently, I dismiss the tenant's application in its entirety.

### Conclusion

I dismiss the entirety 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 6, 2018

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Residential Tenancy Branch