



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, RP

### Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

The landlord, the landlord's witness, the tenant and the tenant's witness attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to cross examine one another, to make submissions and to call witnesses. The landlord's witness gave testimony at the onset of the hearing and then left the proceedings while the tenant's witness left the proceedings until called upon to testify.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and an evidentiary package while the tenant confirmed receipt of the landlord's evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and both parties were duly served with each other's evidence.

### Issue(s) to be Decided

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord and the tenant agreed that this tenancy first began on July 01, 2001, in a different rental unit with the tenant moving, in 2002, to the current rental unit which has a current monthly rent of \$725.00 due on the first day of each month. The landlord and the tenant agreed that the security deposit is \$263.00.

The tenant provided in evidence:

- A copy of a Monetary Order Worksheet which shows the tenant's total monetary claim which consists of \$221.75 for the purchase of a toilet, \$247.64 for the installation of the toilet, \$89,176.00 for stolen property and \$38,400.00 for a rent reduction owed to tenant for repairs not completed. The tenant acknowledges on the Application that the maximum monetary award for this claim is \$35,000.00;
- A copy of a list of the multiple items in need of repair in the tenant's rental unit including the carpets, electrical box, water in light fixture, and peeling enclosure in shower area;
- Copies of various pictures taken from within the rental unit including one of a light fixture with water inside, a mouse in a trap, water damage in ceiling, water damage to area rugs, the walls, the electrical box, a picture of the storage area which states items missing, the rental unit floor/carpet in various sections of the unit and transitions;
- A copy of a letter from the tenant to the landlord dated December 06, 2008, regarding requested repairs to the carpets as well as other issues with the rental unit and facilities in addition to other letters from the tenant to the landlord written in 2003 and 2004 also regarding issues with rental unit;
- A copy of a letter from a community health worker dated October 10, 2010, regarding the poor condition of the tenant's carpets, walls and plumbing issues in the rental unit;
- A copy of a letter from a former occupant of the building dated February 15, 2018, attesting to the poor condition of the tenant's rental unit including the carpets which they state is down to the sub base plywood and listing the numerous repairs which were done to their unit and which have not been done to the tenant's rental unit;
- A Copy of a list of stolen property dated December 20, 2003, which indicates in one section that the "tenant regained consciousness on March 15, 2002, to find

husband gone and many items missing” on one of the lists, and that “numerous items were his and are not listed” and then lists items of value which were taken that the tenant finds acceptable. Another list indicates that items were taken from the apartment and there is separate list for stolen food; and

- Copies of receipts for the toilet in the amount of \$221.75 and it’s installation in the amount of \$247.64;

The landlord provided in evidence:

- a copy of a written response from the landlord regarding the tenant’s claims in which the landlord states that the missing items the tenant is claiming for are not the responsibility of the landlord. The landlord contends that the tenants are warned to not store valuables in the storage lockers due to their flimsy nature. The landlord also submits in this statement that the tenant’s former partner took many items which the tenant has admitted to in some of their submitted evidence. The landlord states that the carpet was in reasonable condition when the tenant moved into the rental unit and that numerous cats caused much of the damage to the carpets. The landlord states that the tenant was compensated a total of \$2,600 in rent reductions for the roof that did leak and that a new roof was installed in April of 2018;
- A copy of a tenant ledger showing the rent reduction for the leaky roof; and
- Copies of invoices for pest control.

The tenant testified that many repairs have been needed at the rental unit over the years of her tenancy which the landlord has neglected to complete. The tenant stated that she had a barely functioning toilet for a long period of time until she had a friend help her to pay for a new toilet and the installation, which she paid back to her friend. The tenant submitted that she replaced the toilet herself as she had given up on the landlord taking any action due to the landlord’s excuses as to why it was the tenant’s fault as opposed to an issue with the toilet. The tenant submitted that she has not had an issue with the toilet since it was replaced.

The tenant submitted that the ceiling had been leaking for an extended period of the tenancy which damaged the ceiling and the carpet as well as a light fixture. The tenant stated that the light fixture was replaced by the landlord, the ceiling repaired by a friend and the damaged carpet covered up with area rugs. The tenant stated that they have also incurred unusually large electricity bills to heat the apartment due to the leaky roof and water in the ceiling.

The tenant stated that her carpet is very old and has not been replaced since originally installed in 1960. The tenant referred to her evidence which shows the carpet in state of disrepair with the big holes and damage in multiple areas. The tenant submitted that the carpet was supposed to be replaced when she first moved into the rental unit.

The tenant submitted that her fridge has never worked well and that it freezes things which should not be frozen, which has resulted in loss of food for the tenant. The tenant testified that the landlord offered to put in a new fridge but that the new fridge stuck out an inch too far and would not allow room for the tenant's wheelchair to get in the kitchen. The tenant confirmed that she has a wheelchair due to a leg that was removed.

The tenant stated that her electrical box is outdated and that the tenant has had to replace an unreasonable amount of fuses due to having them burn out constantly. The tenant also indicated that her car is damaged due to the place that the landlord moved it to. Finally the tenant complained about mice in the rental unit but admitted that the landlord has pest control agents who have been attending to the situation.

The tenant submitted that she is seeking compensation due to the reduction in value of her tenancy as a result of all of the repairs not completed in her rental unit. The tenant stated that she has had multiple items stolen from her storage area and is also seeking compensation for these stolen items.

The tenant's witness stated that the tenant has not had cats in the rental unit for the last couple years. The tenant's witness maintained that the damage to the carpets is in all of the high traffic areas which would not be consistent with cats damaging them as they would not just pick the high traffic areas to do damage. The tenant's witness stated that the tenant's roof still leaks occasionally.

The landlord stated that the tenant initially moved into the rental unit with her partner, three cats and a lot of furniture. The landlord testified that the tenant's partner left shortly after moving into the rental unit and took a lot of items with him which the landlord submits are the missing items that the tenant is referring to. The landlord submitted that he did not have the right to restrict the tenant's partner from taking items as that was between the tenant and her former partner. The landlord maintained that the storage area for the rental unit is very small and that it is not likely that all of the items that the tenant is claiming for would have fit in the storage area.

The landlord testified that they have had a difficult relationship with the tenant for many years due to a large number of cats that the tenant obtained after her partner left and that the large number of cats led to damage in the rental unit and a foul smell. The landlord stated that he attempted to evict the tenant due to these issues at the time but had compassion for the tenant in a past hearing and determined that if the tenant got rid of most of the cats, she could stay in the rental unit.

The landlord confirmed that they attempted to provide the tenant with a new fridge which the tenant refused due to its size. The landlord stated that they had an electrician get the fridge in the rental unit working and that he had not received any complaints about it until this current hearing.

The landlord stated that they were constantly fixing the tenant's toilet on dozens of occasions whenever it would get plugged. The landlord submitted that they were willing to pay for the costs of the new toilet and its installation.

The landlord referred to their evidence to demonstrate that the tenant had a \$200.00 per month rent reduction, totalling \$2,600.00, due to the roof that had previously leaked on occasion. The landlord testified that they have installed a new roof on the building and that it does not leak anymore.

The landlord stated that the tenant blows fuses due to overloading the circuits. The landlord submitted that most units in the building do not have these issues. The landlord testified that even though it is older, the electrical box is in accordance with local building code. The landlord submitted that the car was moved to a location around the building which was determined in a previous hearing. The landlord stated that the car had flat tires and was not being driven at the time it was moved. The landlord stated that the car is likely uninsured as the tenant cannot drive it anymore.

The landlord confirmed that they have pest control attend the building when required. The landlord stated that, due to a tree beside the rental unit and the kitty litter in the rental unit, rats and mice are attracted to the rental unit and can gain access.

The landlord testified that the carpets in the rental unit were old but they were still in fair condition when the tenant moved into the rental unit. The landlord stated that the carpets have been ruined due to the numerous cats that were in the rental unit previously. The landlord submitted that they have placed large area rugs in the rental unit with the tenant's agreement. The landlord stated that the tenant has lifted up the

area rugs to show the poor areas of the carpet but it is not an accurate reflection of how the apartment looks with the area rugs in place. The landlord maintained that they were there recently to serve evidence and the rental unit looked in decent shape.

At the onset of the hearing the landlord's witness stated that she was the building manager at the rental unit for 14 years. The landlord's witness submitted that the tenant's apartment was trashed due to the numerous cats which were previously in the rental unit. The landlord's witness confirmed that the tenant had a rent reduction in the amount of \$200.00 a month for a year due to the roof that was previously leaking.

### Analysis

#### *Compensation for Damage or Loss under the Act, Regulation or Tenancy Agreement*

As the landlord agreed to bear the cost of the toilet and its installation, I grant the tenant a monetary award in the amount of \$469.39.

Regarding the rest of the tenant's claim, pursuant to section 67 of the Act, when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act, Residential Tenancy Regulations (the Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find the tenant bears the burden to prove that they have incurred a loss for the requested repairs and that this loss occurred due to the actions or neglect of the landlord in violation of the *Act, Regulations* or tenancy agreement. In addition to the

above, I further find that the tenant bears the burden that they have taken action to mitigate their losses.

Having reviewed the evidence and testimony, I find that it is undisputed that the tenant received compensation for a leaking roof. I find that there is nothing in writing from the tenant to the landlord regarding a leaking ceiling since the roof was replaced as the most recent correspondence from the tenant to the landlord was in 2008 and the roof was replaced in 2018. Based on a balance of probabilities, I accept the landlord's testimony that they have installed a new roof and that it does not leak anymore. If the roof still leaks occasionally, I find that the tenant has not mitigated their loss by notifying the landlord in writing again and giving a reasonable amount of time for the landlord to complete any repairs.

Regarding the compensation for the other repairs not completed, I accept the tenant's evidence testimony that there have been multiple repairs required in the rental unit, however; I find that the tenant has not mitigated their losses regarding the repairs which have been requested but not completed. Although I find that the tenant has notified the landlord of the requested repairs in writing on multiple occasions, the last request in writing to the landlord provided in evidence is from 2008. I find that the correct course of action for the tenant would have been to file an application with the Residential Tenancy Branch, as they have now done, to obtain an order for the landlord to complete the requested repairs after they had waited a reasonable time after the last letter was provided.

I find that the tenant requesting compensation for all of the losses, including but not limited to the condition of the rug since the beginning of the tenancy, with no further action taken other than writing additional letters is not mitigating or minimizing the total loss. For the above reason I find that the tenant's actions are not in accordance with section 7 (2) of the Act due to the tenant's failure to take any further action prior to 17 years after the tenancy began or after the letters requesting repairs were provided to the landlord. For the above reason I dismiss the tenant's monetary claim related to repairs requested but not completed, without leave to reapply.

Regarding the tenant's claim for stolen items, I find that the tenant has given handwritten lists from 2003 but no actual proof of the items being claimed such as receipts or pictures, or even proof that the noted items were ever in the storage area. Based on a balance of probabilities, I accept the landlord's submission that the storage lockers are too small to have fit all the items that the tenant is claiming for and that it

would not have been reasonable for the tenant to have stored over \$80,000.00 worth of items in the storage lockers.

In addition to the above, I find that the tenant's lists indicates in multiple areas that some of the items taken belonged to her former partner, were taken from the apartment and admitted on the lists that it is likely that he took multiple items upon moving out of the rental unit. If the tenant has suffered a major loss for the listed items, I find that it is unreasonable for the tenant to hold the landlord responsible as there is no evidence that the landlord has done anything in violation of the Act which caused the tenant's loss of property. For the above reasons I find that the tenant has not proven that they suffered a loss due to the actions or neglect of the landlord.

For the above reasons, other than for the compensation for the toilet and its installation, I dismiss the remainder of the tenant's monetary claim for damage or loss under the Act, Regulations or tenancy agreement, without leave to reapply.

*Repairs to be completed by landlord*

Section 32 of the *Act* establishes that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant bears the burden to prove that they have repairs to be completed which the landlord has not completed in a reasonable time frame after being notified in writing from the tenant.

As noted above, I accepted the landlord's submission that the roof has been repaired in 2018 and there is no evidence that the tenant has submitted any request for repairs in writing to the landlord since 2008. For the above reason I dismiss the tenant's request for repairs to be completed on the roof, without leave to reapply.

As the last written correspondence from the tenant to the landlord is from 2008, and all pictures provided are not dated, I find that the tenant has not proven the extent of the repairs that are currently required in the rental unit. The most recent letter provided is from February of 2018 and written by the tenant's neighbour which only specifically mentions the carpet of the tenant's rental unit being down to the underlay and requiring repair in addition to other not specified items. Although there is no evidence that this



letter was provided to the landlord prior to being served with the evidence for this hearing, I do find that the comment about the condition of the carpets is consistent with other correspondence previously provided from the tenant to the landlord in 2008.

Due to the fact that there was no Condition Inspection Report completed, I am not able to determine the condition of the rental unit, including but not limited to the carpets, at the beginning of the tenancy and what damage pre-existed the start of the tenancy.

Although I am not able to determine the condition of the carpets when the tenant moved into the rental unit, the *Residential Tenancy Policy Guideline #40* establishes that the useful life of carpets is 10 years (or 120 months). I find that it is undisputed that the carpets were not new at the beginning of the tenancy. I find that the carpets are significantly past their useful life as the tenant has been in the rental unit for at least 17 years and based on a balance of probabilities it is likely that the carpets are at least 20 years old, if not older. I accept the evidence and testimony that the carpets are in poor condition and need to be replaced. I accept the evidence and testimony that the area rugs provided are fraying, not secured and not suitable as a solution to the carpet which is in an unacceptable state of disrepair and well past its useful life expectancy by at least 10 years.

For the above reasons, I order the landlord to replace the carpet in the rental unit by March 31, 2019. If the repairs are not done by this date or the landlord has not taken significant steps towards the replacement of the carpet in the rental unit by March 31, 2019, the tenant will be at liberty to apply for a rent reduction until the carpet is replaced.

I find that the tenant has not provided sufficient evidence that the electrical box is in need of repair. Although the tenant states that they constantly have to replace fuses, the tenant did not provide any evidence of the fuses purchased, such as receipts or picture of fuses purchased which would demonstrate an unreasonable expense. Unless the tenant is able to demonstrate that the electrical box is unsafe, I find that there is no evidence to support a repair order regarding it.

I find that the tenant has provided sufficient evidence that they are incurring an unreasonable expense in losing food items due to the condition of the fridge. I find that there is no documented evidence, supported with receipts and pictures, of food items purchased by the tenant which they have lost due to problems with the fridge. I find that the landlord has attempted to replace the fridge, which the tenant rejected and there is

no evidence provided that the fridge that the landlord wanted to provide was unreasonable. Although the tenant states that the new fridge stuck out an inch more, no measurements were provided which would enable me to determine whether the new fridge was an unreasonable size in relation to the rental unit.

Regarding any other repairs required in the rental unit, I find that the tenant has not provided anything in writing to advise the landlord of requested repairs since the roof was replaced and compensation was received in 2018 for the leaking roof. If there are other repairs required, the tenant should submit a new written request specifically detailing the requested repairs and give the landlord a reasonable amount of time to complete the repairs.

For the above reasons, the remainder of the tenant's request for repairs is dismissed, with leave to reapply.

I note to the landlord that, if there are items in the rental unit which are in need of repair such as the bathtub enclosure which is peeling off, the landlord is obligated to make those repairs under section 32 of the Act.

### Conclusion

I **order** the landlord to replace the carpet in the rental unit by March 31, 2019.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$469.39, to recover the expenses related to the cost and installation of the toilet.

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: January 21, 2019

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Residential Tenancy Branch