



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT FFT

### 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; and
- authorization to recover the filing fee 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 landlord was represented by counsel.

As both parties were present service of documents was confirmed. Both parties testified that they were in receipt of the respective materials. Based on the testimonies I find that each party was served with the pertinent 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?

Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

While I have turned my mind to all the 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.

This fixed term tenancy began in April 2018. The monthly rent was \$1,850.00. The tenancy ended on September 3, 2018 by way of a mutual agreement signed by the parties.

The tenant seeks a monetary award for damages and loss arising from the landlord's violation of the Act, regulations and tenancy agreement. The tenant testified that after the tenancy ended they came to believe that this suite was not authorized under the municipal bylaws. The tenant submits that they would not have entered into the tenancy agreement had they known this was an illegal suite.

The tenant testified that because the suite was not an authorized suite there were issues such as noise level and the location of the laundry. The tenant submits that the tenancy was rife with deficiencies which negatively affected their enjoyment. The tenant submitted photographs, videos and audio recordings as well as copies of correspondence with the landlord. The tenant testified that they incurred costs for moving and entering into a new tenancy for an equivalent space elsewhere. The tenant claims for losses and damages including the cost of moving, a private security guard and airfare for parents to come and provide support. The tenant testified that they intended to spend time writing in the rental unit but were unable to do so due to the excessive noise.

The landlord disputed the tenant's characterization of the tenancy. The landlord said that they addressed the tenant's complaints and concerns in a reasonable manner. The landlord testified that they were unaware that the rental suite did not meet the municipal requirements until the tenant brought this to their attention after the tenancy had ended.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

The central submission of the tenant is that they occupied a suite that was not in compliance with the municipal bylaws, effectively an illegal suite. The tenant submits that if they were aware that the rental unit was not authorized they would not have entered into a tenancy agreement. The tenant says that the landlord was in violation of the Act by offering a rental suite that did not conform to the municipal bylaws.

I find that the tenant has not provided sufficient evidence in support of their application. I find that there is insufficient evidence that the rental suite occupied by the tenant did not conform to the municipal bylaws. The copy of the bylaw investigation report submitted by the tenant states that on September 19, 2018 bylaw enforcement officers investigated and found one legal suite and no other sign of an illegal suite or structure.

In any event, I find that the mere fact that a suite is not authorized by the local municipality to be insufficient to conclude that therefore the tenant's right to quiet enjoyment would be breached. I find that the tenant's testimony and evidence regarding their loss of quiet enjoyment to show merely minor disturbances. I find that the tenant has not shown that there has been a significant interference with their ordinary use of the property. I find the tenant's complaints to be wholly out of proportion with what would be expected from residing in a building with other occupants.

Furthermore, I find that much of the tenant's monetary claim to have no basis. I find that the tenant's cost of moving and renting a unit elsewhere is not a loss attributable to the landlord. The parties ended this tenancy by way of a mutual agreement. As such, I find that the costs of vacating the suite is simply the cost expected when parties end a tenancy. Similarly, the tenant's claim for airfare for her parents to come and provide support is not a cost that a reasonable person would consider a loss for which the landlord is responsible. I find that the tenant has not shown that the losses claimed arose due to the landlord's actions or negligence.

I find that the tenant has not met their evidentiary burden of showing on a balance of probabilities that they have suffered any losses due to a violation of the Act, regulations or tenancy agreement by the landlord. Accordingly, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed 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: January 29, 2019

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Residential Tenancy Branch