



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRT, MNDCT, OLC, PSF, FFT

### Introduction

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

- a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("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 requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 28 minutes.

The tenant testified that he served the landlord with the tenant's application for dispute resolution hearing package on January 5, 2019, by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. The landlord said that she did not receive the tenant's application but she got an email from the RTB and called in to obtain the hearing information. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on January 10, 2019, five days after its registered mailing. Although the landlord did not receive the package, the landlord confirmed her address during the hearing where the tenant mailed the documents, and the tenant used a proper service method as per section 89 of the *Act*. The landlord agreed to proceed with the hearing.

### Issues to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

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

### Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2018. Monthly rent in the amount of \$1,150.00 is payable on the first day of each month. A security deposit of \$575.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement and addendum were signed by both parties. The tenant continues to reside in the rental unit.

The tenant seeks a monetary order of \$1,532.71 plus the \$100.00 filing fee paid for this application. The tenant also seeks an order to comply because he wants the landlord's rent increase to be served with proper notice.

The tenant seeks lost wages of \$275.12 for taking time off work to prepare for this hearing.

The tenant seeks \$57.59 to receive his keys by priority mail, that he said he dropped in a cab on his way to the airport, while he was out of town on January 1, 2019. The tenant claimed that he talked to the cab company, his mother picked up the keys and they were priority mailed back to him. He claimed that when he told the landlord that he lost his keys, she attempted to "extort" \$100.00 from him, which was more than the cost

to replace them. He said that he did not pay this amount to the landlord, he used his balcony to enter his rental unit without the keys, and the landlord only gave him a spare key for the building, not his rental unit. He said that he kept his rental unit door unlocked from January 1 to 5, which is when he picked up his keys by mail.

The tenant seeks a reimbursement of one month's rent of \$1,150.00 for his rights being violated. He said that he signed a tenancy agreement addendum, drafted by the landlord, which violates the *Act* and his tenancy agreement but that he did so because he needed a place to live. He explained that although he signed it on February 15, 2018 and it was currently February 12, 2019 on this hearing date, almost one year later, he was raising this issue because of the above keys dispute with the landlord. He confirmed that no violations had occurred yet besides the attempted extortion of key money and a future rent increase of 4% on March 1, 2019, which he did not intend to pay. He claimed that clause 4 of the addendum says that keys will be charged at \$50.00 each, which is more than the cost of the keys themselves. He said that in clause 8 of the addendum, the landlord has restricted the right to guests and their ability to stay at the rental unit. He stated that clause 14 of the addendum referenced a 4% rent increase as of March 1, 2019, which is above the allowable *Regulation* amount and did not give proper notice of the rent increase.

The landlord disputes the tenant's claims, indicating that he lost the keys himself. She said that she called the owner and the cleaner, who gave a spare key to the tenant on January 2 or 3. She said that she offered to change the tenant's locks but he refused, which the tenant confirmed. She maintained that the owner does not want to increase the tenant's rent at this time, and when he does, she will serve a proper notice to him. She claimed that the tenant signed the tenancy agreement addendum, when he was not required to do so, and that the guest policy is to protect the rental building's insurance policy as they need to know how many people are living in the building.

### Analysis

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. 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*, *Regulation* 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's entire application without leave to reapply.

I dismiss the tenant's application for lost wages of \$275.12 for taking time off work to prepare for this hearing. I informed both parties during the hearing that the only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees.

I dismiss the tenant's application for \$57.59 to have his keys mailed back to him. The tenant lost his own keys. His loss is due to his own negligence and the landlord is not responsible for this. The tenant did not pay the landlord \$100.00 for a replacement set of keys.

I dismiss the tenant's application for \$1,150.00 for a return of one month's rent. The tenant's rights have not been violated and he has not suffered any damages or losses. He did not pay a rent increase to the landlord and he does not intend to, without proper notice. He did not pay for replacement keys of \$50.00 each. He did not suffer losses as a result of the guest policy indicated in the addendum. The tenant voluntarily signed the tenancy agreement addendum without identifying any of these issues to the landlord before signing. The tenant did not refuse to sign the addendum or ask the landlord to change the terms in the addendum. The tenant has identified issues in the addendum almost one year after signing it, because of the issues with the keys.

I dismiss the tenant's application for the landlord to comply and provide services and facilities. The tenant has not paid a rent increase and does not intend to without proper notice. The tenant has not been given notice to pay a rent increase. The landlord confirmed during the hearing that the owner had not decided to raise the rent and if he did, proper notice would be served to the tenant.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire 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: February 12, 2019

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Residential Tenancy Branch