



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT MNSD FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38; and
- An order requiring the landlord to reimburse the tenant for the filing fee.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 79 minutes to allow the landlord the opportunity to call during the conduct of the hearing. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

### *Service of Notice of Hearing and Application for Dispute*

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on January 10, 2019 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on January 15, 2019.

The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the

landlord with the Notice of Hearing and Application for Dispute Resolution on January 15, 2019

### *Service of Amendments*

The tenant provided affirmed testimony that the tenant served the landlord with two Amendments as follows.

The tenant sent the first Amendment dated April 8, 2019 which added a claim for a monetary order under section 67 and changed the amount of the monetary claim to \$6,034.97 by registered mail on April 13, 2019. The second Amendment dated April 9, 2019 increased the amount of the monetary award requested to \$6,219.58. The tenant testified that she sent this Amendment together with the Amendment of April 8, 2019 as well as additional evidence to the landlord by registered mail on April 13, 2019 and deemed received by the landlord under section 90 five days later, that is, on April 18, 2019. The tenant provided the Canada Post tracking number in support of service referenced on the first page.

Pursuant to sections 89 and 90, I find the tenant served the landlord with the Amendment of April 8, 2019 and the Amendment of April 9, 2019 on April 15, 2019 pursuant to sections 88 and 89.

### Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38; and
- An order requiring the landlord to reimburse the tenant for the filing fee.

### Background and Evidence

The tenant submitted substantial documentary evidence and considerable testimony in a 79-minute uncontested hearing. The tenant was distraught during the hearing, and the hearing was placed on hold for a few minutes to allow the tenant to regain her composure.

The tenant estimated her documentary submissions were "over 300 files". These files included videos, photographs, documents, texts, emails, invoices, and so on. Not all this evidence will be discussed; only material, admissible evidence will be referenced in my decision.

The tenant testified the tenancy began on July 1, 2016 and ended on November 7, 2018. The tenant paid rent in the amount of \$1,855.00 per month on the first day of each month, which included a monthly payment of \$75.00 for city utilities. The tenant paid a security deposit of \$927.50 at the start of the tenancy.

This hearing is the fourth hearing between the parties with respect to this tenancy. Reference to the file numbers is on the first page of this decision. A summary the previous decisions follows:

*“First Application”*

The tenant’s application was heard, and a decision made, on September 13, 2018. The tenant sought the following:

- Compensation in the amount of \$35,000.00 under section 67;
- Repairs under section 32; and
- Reimbursement of the filing fee under section 72.

The landlord agreed to conduct an inspection and repair of the furnace by September 29, 2018. The arbitrator ordered the following:

- The claim for compensation in the amount of \$35,000.00 under section 67 was severed with leave to reapply;
- The repair of the furnace was ordered; and
- The tenant recovered the filing fee.

*“Second Application”*

The tenant’s second application was filed on October 11, 2018, less than a month after the first hearing. The hearing was held, and a decision made on November 20, 2018, after the tenant vacated. The tenant sought the following:

- Cancellation of a 10-Day Notice to End Tenancy for unpaid rent for three months;
- A monetary order for reimbursement of emergency repairs;
- A monetary order for damage and loss;
- An order setting aside a rent increase; and
- Reimbursement of the filing fee.

The tenant's claim included the following:

- Reimbursement for damage to vehicle, in support of which the tenant submitted a receipt dated June 6, 2018

The decision stated the tenant informed the arbitrator she *"wanted to 'dissolve' this application in its entirety and effectively withdraw and cancel the application comprising this matter"*. The arbitrator stated in the decision that both parties confirmed the tenant intended to withdraw the application without leave to reapply.

In a written decision dated November 20, 2018, the arbitrator dismissed the tenant's application without leave to reapply and granted the landlord an order of possession pursuant to section 55(1) of the *Act*.

#### *"Third Application"*

This hearing dealt with cross Applications for Dispute Resolution, the tenant's application having been made on November 1, 2018 (before the Second Application was heard) and the landlord's application having been made on December 27, 2018.

The tenant claimed the following:

- Compensation in the amount of \$35,000.00 under section 67; and
- Reimbursement of the filing fee.

The landlord claimed the following:

- A monetary order for compensation for damage or loss and unpaid rent or utilities under section 67;
- An order authorizing the landlord to retain the security deposit; and
- Reimbursement of the filing fee.

In the decision of March 13, 2019, the arbitrator found that the tenant had two concurrent claims (the Second Application and the Third Application) which together exceeded the monetary jurisdiction of the director. Pursuant to section 58(2) of the *Act*, section 3 of the *Small Claims Act*, and section 1 of the *Small Claims Court Monetary Limit Regulation and Policy Guideline #27*, the arbitrator found the tenant divided her claim contrary to Rule of Procedure 2.9 and declined to hear the tenant's application.

The Arbitrator's decision with respect to the landlord's claims was as follows:

- The landlord was granted a final order for unpaid rent and reimbursement of the filing fee in the amount of \$4,737.50; and
- The landlord was granted authorization to retain the security deposit in partial satisfaction of the claim.

*Fourth Application – Current Application*

The tenant claimed an unspecified amount for loss of use.

The tenant also claimed return of the security deposit and reimbursement for expenses for repairs to the unit as follows:

	ITEM	AMOUNT
1.	Return of security deposit	\$927.50
2.	Reimbursement for damage to vehicle, receipt dated June 6, 2018	\$881.43
3.	Inspection fee for mould, receipt dated September 18, 2018	\$1,995.00
4.	Reimbursement for tests of unit, receipt dated October 12, 2018	\$945.00
5.	Reimbursement for plumbing receipt dated October 23, 2018	\$202.97
6.	Reimbursement of plumbing receipt dated October 23, 2018	\$1,261.70
	<b>TOTAL</b>	<b>\$6,213.60</b>

Each of the tenant's claims will be addressed in turn.

*Claim for Loss of Use*

The tenant claimed an indeterminate amount for loss of use of the refrigerator (two months), dishwasher (25 months), washer (1 month), dryer (8 months), fireplace (13 months) and garage (24 months). The tenant testified that the landlord was told repeatedly about these non-functioning items. The tenant testified that the landlord ignored her complaints and failed to respond in a timely manner or at all with repairs thereby causing the tenant inconvenience and discomfort.

The tenant did not submit documentary evidence of notifying the landlord that repairs were needed with respect to any of these matters. The tenant did not submit dates these items were not functioning, particulars of notification to the landlord, or details of the landlord's response.

*Claim # 1*

The tenant claimed the return of her security deposit.

*Claim # 2*

The tenant claimed reimbursement for damage to her vehicle as the garage door at the unit failed to work; because of this, she was compelled to park her vehicle outside where it was vandalised. The tenant claimed multiple warnings to the landlord about the risk associated with her loss of secure parking in her unit's garage. The tenant submitted a copy of a receipt dated June 6, 2018 for vehicle repairs of \$881.43 which she testified resulted from the vandalism.

*Claim # 3 and # 4 – inspection and test fees*

The tenant testified that she believed the unit contained mould to which leaking water in the unit was contributing and the landlord failed to conduct proper tests despite notice.

The tenant testified the landlord failed to respond to her requests. Because of her belief the landlord would not take the steps necessary to check the unit properly for mould/water, she arranged and paid for two tests without the landlord's consent. The tenant testified she notified the landlord but did not submit documentary evidence of notification of the landlord of her suspicions or the landlord's response.

In support of the first inspection fee, the tenant testified that on September 18, 2018 she paid for tests in the amount of \$1,995.00. The tenant submitted a copy of the receipt for mould sampling.

In support of the second test, the tenant submitted a receipt dated October 12, 2018 in the amount of \$945.00 for "bulk mould samples/testing & reporting".

The tenant did not submit evidence that there was mould in the unit. The tenant submitted many photographs and substantial evidence in support of this part of her claim that she had a reasonable belief there was mould and water damage in the unit and that there was an emergency situation.

The tenant testified that her son had asthma and she believed that the possible presence of mould in the unit that was a significant factor in his declining health. The

landlord submitted a medical note dated October 11, 2108 recommending the unit be tested for mould and a medical note dated October 30, 2017 in support of her assertion that the child had worsening asthma.

The tenant did not submit evidence supporting her claim that any mould in the unit was related to her son's asthma.

*Claim # 5 and # 6 – plumbing repairs*

The tenant explained that the plumbing in the unit was not working properly, there was water damage, and the water was contributing to the "mould problem". The tenant stated she informed the landlord many times of her suspicions but did not submit documentary evidence of informing the landlord or of the landlord's response.

Because of her belief that the landlord would not properly investigate her suspicions, the tenant arranged and paid for two plumbing services without the landlord's consent for which she seeks compensation.

The tenant submitted two receipts, both dated Octobers 23, 2018. The first was for a plumbing inspection in the amount of \$202.95. The invoice included a narrative which stated that an inspection of water piping, valves, taps, water pressure and water heater was conducted. Service and repairs were recommended because of water damage visible in the bathroom sink cabinet. No plumbing issues of an emergency nature were noted.

The tenant retained the plumbing services of the same company and had maintenance work performed including replacing the kitchen faucet and rebuilding a toilet. The amount of the receipt was \$1, 261.70.

The tenant submitted no evidence there was an urgent repair issue with respect to the work performed by the plumbing company.

Analysis

The doctrine of *res judicata* does not permit the adjudication of matters already decided.

I find the tenant's claim # 1, the application for the return of the security deposit, was previously decided in the Third Application. I therefore dismiss this portion of the tenant's claim without leave to reapply.

Similarly, I find the tenant's claim # 2, reimbursement for damage to her vehicle, in support of which the tenant submitted a receipt dated June 6, 2018, was previously decided in the Second Application; the tenant submitted the same receipt in that application. At that hearing, on the application by the tenant and by consent of the parties, the tenant's claim in its entirety, which included this claim, was dismissed without leave to reapply. I therefore dismiss this portion of the tenant's claim without leave to reapply.

The tenant claims damages for loss of use. The remainder of the tenant's claims is as follows:

3.	Inspection fee for mould, receipt dated September 18, 2018	\$1,995.00
4.	Reimbursement for tests of unit, receipt dated October 12, 2018	\$945.00
5.	Reimbursement for plumbing receipt dated October 23, 2018	\$202.97
6.	Reimbursement of plumbing receipt dated October 23, 2018	\$1,261.70

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the onus is on the tenant to prove the tenant is entitled to compensation as claimed. The tenant's claims will be addressed in turn.

*Tenant's claim for loss of use - landlord's obligation to repair – non-emergency*



Section 32 of the *Act* places reciprocal responsibilities on the parties regarding maintaining the premises.

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. *Residential Tenancy Policy Guideline 1 – Landlord & tenant – Responsibility for Residential Premises* provides guidance on the parties' obligations.

Section 32 states as follows:

**Landlord and tenant obligations to repair and maintain**

**32 (1)** A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, the tenant claimed loss of use for multiple items as set out above. This included for loss of use of the refrigerator (two months), dishwasher (25 months), washer (1 month), dryer (8 months), fireplace (13 months) and garage (24 months).

These repair items are of a non-emergency nature.

A tenant must notify the landlord of the non-emergency problem and allow the landlord a reasonable amount of time to fix it. The landlord is generally responsible for these repairs if the damage was not caused by the tenant.

Considering the evidence in this case, I find the tenant has not met the burden of proof on a balance of probabilities that these items needed repairing, that she notified the landlord of the problems, that the landlord failed to act in a reasonable manner to correct the problems, that the tenant did everything reasonable to mitigate the loss, or that the tenant has suffered any loss.

I therefore dismiss the tenant's claim under this heading without leave to reapply.

*Landlord's obligation to repair – emergency*

The tenant sought reimbursement of the four invoices listed above as items #3 - #6 relating to emergency repair expenses because the landlord failed to conduct them.

During the hearing, the tenant explained that she viewed the possibility there was mould in the unit and water leaking or moisture present contributing to mould as being an

emergency, particularly considering the possible effect on her son's health. The tenant wanted the unit tested for mould and moisture damage without delay. The tenant's suspicions there was mould in the unit was primarily supported by photographs of substances on filters, in the air and on various surfaces; the tenant provided no documentary evidence there was mould in the unit at any time that was harmful to health or amounted to an emergency.

The tenant testified the landlord refused to conduct the tests and inspections, so she did them at her own expense without authorization or any promise of repayment. The tenant did not submit documentary evidence of requesting this testing or repairs or of the landlord's refusal to test/repair.

The *Act* provides specific guidance on the procedure for emergency repairs. Section 33 provides that the tenant may make emergency repairs *only* in certain circumstances: the repairs must be needed, the tenant must make at least two attempts to contact the landlord, and the tenant must give the landlord a reasonable time to make the repairs.

The section describes "emergency repairs" as those repairs that are urgent, necessary for health or safety of anyone or for the presentation or use of residential property and made for certain purposes such as repairing major leaks in pipes or the roof, damage or blocked water or sewer pipes or plumbing fixtures, and so on.

Section 33(1) states as follows:

**33 (1)** In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

Considering all the evidence submitted, I find on a balance of probabilities that the tenant has not met the burden of proof with respect to compensation claimed for items

#3 - #6. I find the tenant has failed to establish there was a situation (the presence of mould or water damage) which was an urgent situation within the meaning of section 33. I find the tenant has failed to establish there was an urgent situation which warranted the tenant acting on her own without notifying the landlord or bringing an appropriate action for relief under the *Act*.

I find the tenant has not proven on a balance of probabilities that the landlord was notified in accordance with the *Act*, that the landlord had a duty to test/repair, or that the landlord failed to meet the duty to repair. I find the tenant has failed to establish she mitigated her damages in incurring the expenses for the testing/repairs.

I therefore dismiss the tenant's claim for reimbursement of these expenses set out in items #3 - #6 without leave to reapply.

I find that the tenant is unsuccessful with respect to all her claims and is therefore not entitled to reimbursement of the filing fee.

In summary, I dismiss all the tenant's claims without leave to reapply.

#### Conclusion

I dismiss all the tenant's claims 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: May 7, 2019

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Residential Tenancy Branch