



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE WESTSIDE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, FFT

On June 3, 2019, the Tenant applied for dispute resolution under the *Residential Tenancy Act* seeking the following:

- to be paid back for the cost of emergency repairs made during the tenancy.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenant and the Landlords agents were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

At the start of the hearing the Tenant requested to amend the spelling of the Landlords name on the Tenants application. The application was amended accordingly.

Near the end of the hearing the Tenant asked to include a claim to recover rent. The Tenant was informed that his application did not include a specific claim for money owed or compensation for damage or loss. The Landlord was asked whether he understood the Tenants application was to include a claim to recover rent and the Landlord replied no.

Since I only have authority to deal with the claims listed on an application, the Tenants request to include a claim to recover rent was not permitted.

### Issues to be Decided

- Is the Tenant entitled to a monetary order for the cost of making emergency repairs to the unit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began on January 1, 2001, as a one-year fixed term tenancy that continued thereafter on a month to month basis. At the end of the tenancy, rent in the amount of \$2,056.00 was due on or before the first day of each month. The Landlord testified that the Tenant moved out of the rental unit at the end of April 2019. The Tenant testified that he moved out on April 1, 2019.

The Tenant is seeking compensation in the amount of \$4,000.00. The Tenant testified that he lived in the rental unit for 19 years and has dealt with three or four different property managers during that time. The Tenant testified that the rental property was not well maintained during this time and the Landlord did not respond to issues such as a water leak, mould, and a bad smell. The Tenant testified that the Landlord's agent informed him that the Landlord will not pay to fix the rental property.

The Tenant testified that he spent \$5,000.00 on fixing the rental unit in 2007 and 2008. The Tenant testified that he cleaned and dealt with mold on the drywall and mouldings. The Tenant testified that he had permission to do whatever he wanted to do. He testified that in 2008 he provided the Landlord with an invoice for his work in the amount of \$2,800.00 and the Landlord refused to pay.

The Tenant did not provide any documentary evidence of an agreement from the Landlord that the Tenant could perform cleaning or repairs and be compensated for his time. The Tenant did not provide a copy of an invoice that was provided to the Landlord in 2008.

The Tenant was asked if he ever applied for dispute resolution seeking an order for the Landlord to make repairs to the unit. The Tenant testified that he never made any such application.

The Tenant testified that he always needed to be present in the unit when the Landlord came to deal with issues or for inspections. He testified that the Landlord did not have their own key for entry into the rental unit.

The Tenant testified that the Landlord agreed to replace the carpet; however, the carpet was not replaced before the Tenant moved out.

The Tenant testified that in 2018 he was having a problem with heat in his unit and he had to purchase a heater at a cost of \$40.00. The Tenant testified that it took the Landlord two weeks to repair the heater. The Tenant testified that the Landlord deducted \$40.00 from his rent.

In response to the Tenant's claims the Landlord testified that he has no knowledge of who the Landlord's agents were back in 2007 and 2008.

The Landlord testified that he has no record of an agreement between the Landlord and Tenant for compensation for cleaning and repairs and there is no record that the Tenant gave the Landlord an invoice.

The Landlord testified that he always responded to the Tenants concerns immediately. The Landlord testified that it took a couple of weeks to find a replacement heater for the unit. The Landlord testified that the carpet was replaced, but it took three weeks to arrange for the purchase and installation.

The Landlord testified that the Tenants file indicates that there was a myriad of issues between the Tenant and previous agents.

The Landlord testified that any work done by the Tenant was done without the Landlords authorization and the Tenant did not provide any receipts.

Section 32 of the Act states that 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.*

Section 33 of the Act states that “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.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
  - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
  - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant 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 Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

Based on all the above, the evidence and testimony of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

The burden of proof rests with the applicant. I find that the Tenant has provided insufficient evidence that there was an agreement between the parties that entitles the Tenant to be compensated for cleaning and repair of the rental unit. In addition, there is insufficient evidence to find that the Tenant provided the Landlord an account and receipt for repairs that were completed. It also appears that the cleaning and repairs that the Tenant described do not meet the definition of an emergency repair under section 33 of the Act.

The Tenant had a right to make application to dispute resolution to request an order for the Landlord to make emergency repairs but did not do so.

Accordingly, I dismiss the Tenant's claim for a monetary order for the cost of making emergency repairs to the unit.

### Conclusion

The Tenant's application for a monetary order for the cost of making emergency repairs to the unit is unsuccessful and is dismissed.

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: September 09, 2019

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Residential Tenancy Branch