



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRT, PSF, RR, FFT

### Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application 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. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 6, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Preliminary Matters

At the commencement of this hearing, the tenant advised that the spelling of their middle name is as it appears above and not as was identified on their application for dispute resolution. With the agreement of the parties, I have changed the spelling of the tenant's name accordingly.

The parties also testified that a hearing of another of the tenant's applications occurred on November 20, 2019. They have both received a decision on that application (see reference above). Although the tenant applied for many of the same items as are included in the current application, the presiding arbitrator decided to address only the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy (the 10 Day Notice) of October 6, 2019. The remainder of the tenant's application was dismissed with leave to reapply. The 10 Day Notice was issued on the basis of the tenant's failure to pay for the landlord's rent of the heat pump for this rental property. The landlord maintained that this rental fee was a valid utility cost that the tenant had agreed to assume as part of the tenant's commitment to pay for utilities in this rental unit. In the presiding Arbitrator's November 20, 2019 decision, they made the following determination with respect to this issue, which formed part of the tenant's current application for a monetary award and a rent reduction:

*... I find that the section 32 of the Act requires that landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. A functioning "primary heating system" is requirement to meet health, safety and housing standards. Section 33 of the Act further requires that any repairs to a "primary heating system" qualify as "emergency repairs" and are the responsibility of the landlord to maintain. A primary heating system could include electric baseboards, a gas furnace, or a heat pump, for example. I also note that the tenancy agreement does not set out any requirement for the tenant to pay for the costs of the heat pump rental, which is separate from the tenant's requirement to pay for the cost of heating the rental unit.*

*For these reasons, I find that the tenant is not responsible for the heat pump rental costs and therefore the landlord cannot consider any unpaid costs on the utility bill related to the heat pump rental as attributable to the tenant as unpaid rent...*

On this basis, a final and binding decision has already been made by another Arbitrator appointed pursuant to the Act with respect to who bears the responsibility for paying for the rental of the heat pump in this rental unit. As the tenant has already received the finding that they were seeking with respect to their current application for a monetary award of \$159.26 for the rental of the heat pump and their request for an order that they not be required to pay for this rental in the future, the tenant withdrew this portion of their application. These portions of the tenant's application are hereby withdrawn.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for emergency repairs they have undertaken at the rental unit? Should an order be issued requiring the landlord to provide services and facilities that the tenant expected to receive as part of their tenancy agreement? Should any rent reduction be issued to the tenant for the landlord's failure to provide services and facilities that the tenant expected to receive when they entered into this tenancy agreement? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous invoices, estimates, documents, photographs and e-mails, 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.

On June 30, 2019, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that is to run from July 1, 2019 until June 30, 2020. The parties agreed that the landlord provided an allowance of \$50.00 per month from the original asking rent as reimbursement for the lack of cleaning that had been undertaken by the time that the tenant was to take possession of the rental unit. The parties agreed that the resulting monthly rent for this tenancy is set at \$2,250.00, payable on the first of each month, plus utilities. The landlord continues to hold the tenant's \$1,125.00 security deposit paid when this tenancy began.

The tenant's original application for a monetary award sought reimbursement of \$205.03. In support of this amount, the tenant supplied a number of Monetary Order Worksheets, none of which resulted in the requested amount. The most recent of the tenant's Monetary Order Worksheets identified requests of \$150.00 for fixing and replacing outdoor sprinklers, which the tenant maintained was an emergency repair, and \$159.26 for 92 days of rental of the heat pump.

As noted above, the heat pump rental issue has been withdrawn from this application, as it has already been addressed through the previous Arbitrator's decision. Another of the tenant's requests for reimbursement sought the recovery of \$55.42 in registered mailing costs from the landlord.

Although the Agreement made no reference to the landlord's commitment to providing blinds, there was a reference in the detailed joint move-in condition inspection report that two blinds were missing in the living room of this rental unit. The landlord did not dispute that the tenant understood when this tenancy began that the landlord would be providing blinds to cover the windows in the living room of this rental unit. The landlord agreed to obtain and install blinds to cover the windows in this room.

The parties agreed that the exterior windows of this rental unit need cleaning. Although the landlord acknowledged that this work needed to be undertaken, they said that they were planning to undertake this work in the spring of 2020. The tenant said that they have been living with filthy windows since they moved into the rental unit in July 2019, and that delaying this work until spring was unreasonable.

I heard considerable sworn testimony and reviewed photographic and written evidence with respect to the tenant's claim that the doors to both the refrigerator and the attached freezer have not been operating correctly since this tenancy began. The tenant said that they have incurred spoiled food as a result of the doors not being properly secured on their hinges in both the refrigerator and freezer portions of this appliance. The landlord correctly noted that there was no mention of deficiencies in this regard in the joint move-in condition inspection report. The landlord asserted that any damage to these doors that has occurred must have arisen during the course of this tenancy. The landlord said that after inspecting this appliance they realized that the doors have to be closed properly each time in order to enable this appliance to operate properly. The landlord did not know the age of the refrigerator but estimated it to be ten years old, as the house is approximately that old.

The tenant also alleged that a technician who visited the property to investigate their complaint about the heat pump advised that the thermostat was not working correctly and needed replacement. The landlord was also at that meeting and claimed that no mention of problems with the thermostat was conveyed to them at that inspection. The landlord provided copies of the emails exchanged with the company that undertook this inspection and noted repairs to other portions of the heat pump, which the landlord believed were sufficient to ensure that this equipment was working correctly.

The tenant's claim for emergency repairs was based on their replacement of the exterior sprinklers. They said that this qualified as an emergency repair because this is a nicely landscaped property and sprinklers were necessary to protect the grounds.

The tenant's witness gave sworn testimony that they visited the rental unit a few days after the tenant took over possession of the rental unit. They described the condition of the fridge at that time, noting that neither the fridge door nor the freezer door were properly set on their hinges. One door was clockwise from its proper closing position and the other was counter clockwise. At that time, the tenant had advised their witness that they had already encountered spoiled food as a result of the state of disrepair of the doors of the fridge. The witness said that as recently as two weeks ago they returned to the rental unit and noticed that the doors still do not close properly and the refrigerator door has to be pushed with considerable force in order to properly engage the closing mechanism.

The tenant's witness also said that they were present when the heating technician visited the premises. They confirmed the tenant's assertion that the heating technician advised that the thermostat was malfunctioning and needed replacement.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord contravened the *Act* and their Agreement, and that the tenant has suffered a loss in the value of their tenancy or has incurred expenses to undertake emergency repairs to the rental unit for which they should be reimbursed.

As mentioned at the hearing, section 33 of the *Act* outlines the process whereby tenants may undertake emergency repairs and obtain compensation from their landlords for such repairs. This section reads in part 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...*

*(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.*

*(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant*

- (a) claims reimbursement for those amounts from the landlord, and*
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed...*

As noted at the hearing, the repair or replacement of outside sprinklers for the maintenance of the yard or grounds is by no means an emergency repair as defined by section 33(1) of the *Act*. I dismiss this portion of the tenant's application without leave to reapply, as I find that the tenant falls very far short of establishing that the type of repair undertaken by the tenant qualifies in any way as an emergency repair for the purposes of the *Act*.

Section 32(1) of the *Act* outlines a landlord's responsibilities to provide and maintain rental accommodation in a state of decoration and repair that:

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

*(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.*

Although the tenant did not make specific claims for repairs, they did ask that the landlord provide services and facilities that they expected to receive as part of this Agreement. Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past or future rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

Based on a balance of probabilities, I find that the tenant has provided sufficient sworn testimony and other evidence to demonstrate that the refrigerator in the rental unit is not operating properly and needs either repair or replacement. In making this decision, I attach little weight to the landlord's claim that the detailed joint move-in inspection report reveals that there was no mention of this deficiency when this tenancy began. I find that the tenant's witness provided compelling sworn testimony to support the tenant's assertion that the tenant noticed this problem very soon after this tenancy began. In coming to this determination, I also find that this type of problem might not be easily apparent during a joint move-in inspection. This type of problem might only be recognizable after a tenant took possession of the rental unit and discovered that malfunctioning doors were causing food spoilage and excessive use of hydro.

For these reasons, I order the landlord to retain a qualified appliance technician to inspect and, if possible, repair the refrigerator and attached freezer in the tenant's rental unit by December 31, 2019. In the event that repairs are not possible and since this refrigerator may very well be approaching the end of its useful life, I order the landlord to provide a suitable functioning replacement refrigerator and attached freezer of at least comparable size by January 31, 2020. In the event that these actions are not taken by January 31, 2020, I order that as of February 1, 2020, the monthly rent for this rental unit be reduced by \$50.00 per month until the month after the landlord complies with this order.

Based on the testimony of the parties and the evidence before me, I find that the tenant reasonably expected that the landlord would provide blinds to the living room in the rental unit when this tenancy began. As such, I order the landlord to install blinds in the

tenant's living room by December 31, 2019. In the event that the landlord does not comply with this order, I order that as of January 1, 2020, the monthly rent for this rental unit be reduced by \$50.00 per month until the month after the landlord complies with this order.

Based on the undisputed testimony and evidence before me, I find that the landlord's failure to clean the exterior windows contravenes the landlord's responsibilities pursuant to section 32(1) of the *Act*. I order the landlord to clean the exterior windows of this rental unit by November 30, 2019. In the event that the landlord does not comply with this order, I order that as of December 1, 2019, the monthly rent for this rental unit be reduced by \$50.00 per month until the month after the landlord complies with this order.

I have given careful consideration to the sworn testimony of the parties and the tenant's witness and their written evidence with respect to the tenant's claim that the thermostat on the heat pump needs replacement. I find that the tenant has not provided sufficient evidence that would demonstrate a need to replace the thermostat in the heat pump. In this regard, I rely heavily on the written evidence supplied by the landlord with respect to the September 18, 2019 inspection of the heat pump provided by the technician who examined that piece of equipment. I also note that this inspection occurred following the tenant's application for dispute resolution. The landlord also gave convincing and detailed sworn testimony with respect to the landlord's follow-up call to the company that provided the inspection. I also attach weight to the landlord's assertion that the landlord was told that there was no notation that the thermostat was malfunctioning or required replacement in the technician's notes retained by the company that undertook the inspection and repair work to the heat pump. Since I accept that the landlord has already taken the steps required pursuant to section 32(1) of the *Act* to attend to the tenant's concerns about the heat pump, I dismiss this aspect of the tenant's application without issuing any order against the landlord.

Although the tenant's request for reimbursement of their registered mailing costs was not properly before me, I advised the parties at the hearing that the only hearing related costs that parties are allowed to recover is the Applicant's filing for their application. I dismiss this request for the recovery of mailing costs without leave to reapply.

Since the tenant was partially successful in this application, I allow them to recover their \$100.00 filing fee from the landlord.



## Conclusion

The tenant's application for a monetary award for emergency repairs to replace outside sprinklers is dismissed without leave to reapply. The tenant's application for a monetary award for a reduction in rent for the rental of the heat pump is withdrawn.

I order the landlord to provide a suitable functioning replacement refrigerator and attached freezer of at least comparable size by January 31, 2020. In the event that these actions are not taken by January 31, I order that as of February 1, 2020, the monthly rent for this rental unit be reduced by \$50.00 per month until the month after the landlord complies with this order.

I order the landlord to install blinds in the tenant's living room by December 31, 2019. In the event that the landlord does not comply with this order, I order that as of January 1, 2020, the monthly rent for this rental unit be reduced by \$50.00 per month until the month after the landlord complies with this order.

I order the landlord to clean the exterior windows of this rental unit by November 30, 2019. In the event that the landlord does not comply with this order, I order that as of December 1, 2019, the monthly rent for this rental unit be reduced by \$50.00 per month until the month after the landlord complies with this order.

Since the tenant was partially successful in this application, I allow them to recover their filing fee from the landlord. As this is a continuing tenancy, I allow the tenant to implement this monetary award of \$100.00 by reducing a future monthly rent payment by \$100.00.

I dismiss the tenant's application to have the thermostat in the heat pump either repaired or replaced. I also dismiss all other portions of the tenant's application.

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: November 21, 2019

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Residential Tenancy Branch