



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Dispute Codes**

CNR RP LRE 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;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs or emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

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 confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application. All parties confirmed receipt of each other's evidentiary materials.

Both parties appeared for a hearing on December 3, 2019, and dealt with the tenant's applications above, with the exception of the monetary component of his application. This is a second application filed by the tenant regarding the same matters. I therefore find that this current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again. Accordingly, I dismiss the tenant's application with the exception of the monetary claim.

## **Issue(s) to be Decided**

Is the tenant entitled to a monetary compensation for monetary losses or money owed under the *Act*, regulation, or tenancy agreement?

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

### **Analysis Background and Evidence**

This fixed-term tenancy began on June 18, 2019, with monthly rent set at \$980.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$490.00, which the landlord still holds. Both parties appeared on December 3, 2019 for a hearing ,and agreed that this tenancy will end at 4:00 p.m. on December 31, 2019.

The tenant filed a monetary claim in the amount of \$2,246.00 as set out in the table below:

<b>Item</b>	<b>Amount</b>
Return of Half a Month's Rent	\$490.00
Cost of Staying at friend's place	1,200.00
Lost Food and clothes	300.00
Lost Wages	256.00
<b>Total Monetary Order Requested</b>	<b>\$2,246.00</b>

The tenant testified that he has been dealing with a rodent infestation since October 15, 2019. The tenant testified that he had notified the landlord of the problem, but the landlord failed to address the problem in a timely manner.

The tenant submitted text messages he had sent to the landlord on October 15, 2019. The landlord responded that he was away, and would get back to the tenant when he returned the following week. The text message shows a response from the landlord on October 21, 2019 informing the tenant he was back. The tenant testified that the landlord made little effort to address the problem, and did not call a pest control company.

The tenant suffered extreme stress, and could not sleep. The tenant testified that the rodents had damaged his clothing, and caused him to lose his food. The tenant is also claiming half a month's rent, plus the cost of staying at a friend's place, and lost wages. The tenant testified that he had to stay elsewhere as he did not feel safe.

In the hearing on December 3, 2019, the landlord agreed to patch up the hole where the mice were entering on December 8, 2019. Both parties confirmed at the hearing held on December 20, 2019 that this had yet to be completed as the tenant was not available on the agreed on date and time. The tenant had informed that landlord that he would contact him to arrange a new date and time, and at the time of the hearing a new time and date had yet to be arranged by the tenant.

The landlord disputes the tenant's entire monetary claim as he feels that he has made efforts to work with the tenant in resolving the matter, including allowing the tenant to end the fixed term tenancy early.

### **Analysis**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 33 of the *Act* states the following in regards to emergency repairs:

### **Emergency repairs**

**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...
  - (v) the electrical systems....

(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...

(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.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, a rodent infestation is not considered an emergency repair.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

**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.*

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I have considered the testimony of both parties, and while the tenant had provided testimony to support that he had experienced stress and inconvenience during this tenancy, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill his obligations as required by section 32(1) of the *Act* as stated above.

I find that due to conflicting schedules, both parties had difficulty arranging times to attend the tenant’s unit to address the matter. I find that both parties had mutually agreed during the last hearing held on December 3, 2019 to have the landlord attend the rental unit, but it was due to the tenant’s actions, and not the landlord’s, that the matter was further delayed.

Furthermore I find that the tenant did not provide any witness testimony, nor did they produce any expert evidence, to support that the home was truly unsafe or uninhabitable.

Although I find that the tenant's expectations of this tenancy were not met, I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter. I find that the landlord had complied with the *Act*, and has shown a willingness to work with the tenant in dealing with this matter. On this basis, I am dismissing the tenant's entire monetary claim without leave to reapply.

As the tenant was not successful with his claim, I dismiss the tenant's application to recover the filing fee without leave to reapply.

### **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: December 23, 2019

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Residential Tenancy Branch