



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CANMEX HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDCT RP RR

### **Introduction**

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

- a monetary order for compensation for loss, emergency repairs, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

The landlord was represented by their agents SM and RB. The tenant appeared with her counsel ER. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the *Act*.

### **Issues**

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

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

### **Background and Evidence**

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.

This month-to-month tenancy began on July 1, 2015. Monthly rent is currently set at \$754.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$350.00, which the landlord still holds.

The tenant is making a monetary claim in the amount of \$10,762.50 as set out in the table below, as well as a request for a rent reduction in the amount of \$193.25 until the requested repair is completed.

<b>Item</b>	<b>Amount</b>
Loss of Quiet Enjoyment - December 2017-April 2019 (50% rent reduction)	\$7,424.00
Loss of Quiet Enjoyment – May 2019-September 2019 (25% rent reduction)	1,338.50
Loss of Personal Belongings	1,500.00
Compensation for towed car	500.00
<b>Total Monetary Order Requested</b>	<b>\$10,762.50</b>

Counsel for the tenant provided the following submissions. The tenant suffered a loss of quiet enjoyment due to the landlord's failure to fix and maintain two of her doors. The tenant's front door was damaged after a break-in. The door was repaired in April of 2019, but the tenant's back door has yet to be repaired, exposing the tenant and her belongings to moisture, wind, and inadequate protection from outside elements, especially in the colder winter months.

The tenant submitted photographs in support of her claim which show water penetrating the door seal, and entering her rental unit. As a result of the broken door, the tenant has suffered a loss of her personal belongings, which she has attempted to protect from

water and moisture. The tenant has approximated the value of the loss goods at \$1,500.00, which includes loss of personal clothing, suitcases, and a sofa.

The landlord's failure to repair the tenant's door has had a major impact on the tenant's mental health as she suffers from anxiety and post traumatic stress disorder.

The tenant is also seeking compensation for her car that was towed by the landlord. The tenant's car was torched and windows smashed in an incident which the tenant submits was part of a criminal investigation. The tenant submits that the landlord had towed the car without her permission, causing her a monetary loss of approximately \$500.00.

The landlord is disputing the tenant's entire monetary claim and request for a rent reduction. The landlord testified that the tenant's front door was replaced by the landlord in a timely manner despite the fact that the damage was not caused by the landlord. The landlord responded that the building was built in 1940, and has fulfilled their obligations to repair and maintain the building in accordance with the Act. The landlord testified that they attended the rental unit to inspect the rental unit for mold, but found no air leak. The landlord testified that the tenant had covered the back door with a sheet, and refused to remove it. The landlord testified that some of the reported issues were due to the tenant's puppy, and not the door. The landlord testified that no other tenants in the building have reported issues with mold. The landlord included an email dated February 7, 2019 after attending the rental unit. The landlord testified that their practice is to deal with an issue if reported, and determined to be a problem. Counsel for the tenant submits that the landlord was aware of the problem with the door as it was referenced in a previous application for dispute resolution by the tenant.

The landlord is also disputing the tenant's monetary claim for her car. The landlord does not dispute that the vehicle was towed, but only after the tenant was sent a final warning on September 28, 2017 to have the uninsured car removed by October 14, 2017.

### **Analysis**

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.

Furthermore, 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.” In this case, the tenant has applied for a rent reduction for the tenant’s loss of quiet enjoyment under section 28 of the Act, as set out below.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that it was undisputed by both parties that the tenant's front door was damaged. I am satisfied that the landlord had taken the necessary steps to repair the broken door upon being informed of the damage. The tenant's application for a rent reduction also relates to the other door that has yet to be repaired. The landlord testified that they had made efforts to assess the damage, but no signs of mold were found. The landlord also submits that the tenant had covered the door, preventing the landlord from performing a proper assessment of the situation. I find that the evidence submitted by the tenant does support a possible problem in the rental unit related to the door and mold. Despite this, I am not satisfied that the evidence shows that the landlord was provided to opportunity to properly investigate the matter, or maintain or repair the rental unit. I find that the landlord has shown a willingness to perform repairs as required, as evidenced by the repair to the front door. Accordingly, I dismiss the tenants' application for a retroactive rent reduction for the two doors without leave to reapply.

Given the testimony and evidence before me, I order the landlord to re-attend the rental unit within 2 weeks of this receipt of this order to inspect the rental unit for any damage to the door and mold, and repair the rental unit to an adequate level of occupancy as set out in sections 32 the *Act*. If the landlord fails to perform repairs as required, I allow the tenant leave to reapply for a rent reduction in the case that the landlord fails to comply with this order.

In regard to the tenant's application for compensation for her damaged personal belongings, I am not satisfied that the tenant had provided sufficient evidence to support these losses were directly and solely due to the landlord's actions or contravention of the *Act*. I find that the tenants have not met the burden of proof to support these claims. I have also considered the tenant's monetary claim for her car. Although it was undisputed by the landlord that the car was towed by the landlord, I am satisfied that the landlord had provided sufficient evidence to support that the tenant was given sufficient warning to have the damaged and uninsured car removed from the property. Accordingly, I dismiss the remainder of the tenant's claims without leave to reapply.

### **Conclusion**

I order the landlord to re-attend the rental unit within 2 weeks of this receipt of this order to inspect the rental unit for any damage to the door and mold, and repair the rental unit

to an adequate level of occupancy as set out in sections 32 the *Act*. If the landlord fails to perform repairs as required, I allow the tenant leave to reapply for a rent reduction in the case that the landlord fails to comply with this order.

I dismiss the remainder of tenant's application 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: January 21, 2020

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Residential Tenancy Branch