



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **PSF, FFT, MNDCT, RP**

### Introduction

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

- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* pursuant to section 62;
- 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 requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

At the outset, the parties testified the tenant had vacated the unit; accordingly, the tenant withdrew the claims under sections 32 and 62.

The landlord acknowledged receipt of the tenant's materials; no issues of service with respect to service upon the landlord were raised. Accordingly, I find the tenant served the landlord as required under the *Act*.

However, the tenant denied receipt of the landlord's materials. The parties agreed the tenant vacated the unit at the end of December 2019. The landlord testified the landlord knew the tenant had vacated the unit and she did not know the tenant's new address.

According, the landlord posted the materials to the door of the unit *after* the tenant vacated; she provided a supporting photograph. The tenant denied receipt of the documents. The tenant testified that she provided Canada Post with her new address and any registered mail sent by the landlord would have been forwarded to her.

Section 88 sets out the rules for service of documents. Section 88(g) provides that documents may be served “by attaching a copy to a door or other conspicuous place at the address *at which the person resides*”.

As the landlord acknowledged knowing that the tenant did not reside in the unit where the landlord posted the documents, I find the landlord did not properly serve the documents. As the tenant did not receive the documents in any other manner, I find the landlord has failed to properly serve the documents as required under the Act. Accordingly, I will not consider the landlord’s documents in my decision.

#### 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 requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

#### Background and Evidence

The parties agreed that the month-to-month tenancy began on April 1, 2017 for a lower suite in a residential building. Rent was \$1,700.00 monthly payable on the first of the month. No security deposit was paid, and no tenancy agreement was signed.

The tenant clarified her claim at the hearing as follows:

Reimbursement of a invoice for painting of \$6,520.00;  
Payment of storage fees of \$250.00 for 20 months of the tenancy; and  
Reimbursement of the filing fee

The tenant testified that she, her husband, relatives and friends painted both her unit and the upstairs suite pursuant to a verbal agreement with the landlord that the landlord would compensate the tenant for materials and labour. The tenant submitted a copy of an invoice of \$6,520.00 dated June 1, 2017 from a company owned by the tenant's husband which the tenant stated she promptly sent to the landlord and which remains unpaid. The tenant said the invoice covered painting to both the unit and the suite upstairs. The tenant stated that no person who painted was actually paid, pending the outcome of this hearing.

The tenant submitted no other documents supporting her assertion that the parties had such an agreement. No substantiating invoice for purchase of paint was submitted.

The landlord flatly denied that there was any such agreement with the tenant. The landlord said the unit was in excellent condition when the tenant moved in. The landlord stated that the painted surfaces looked the same when the tenant moved out as when she moved in.

With respect to the claim for payment for storage, the tenant testified that, upon moving in to the unit, she discovered that the landlord had stored personal possessions in the unit, a situation which continued throughout the tenancy. Although the tenant testified this was a great inconvenience, she acknowledged she did not request compensation for the storage until the end of the tenancy. The landlord denied any information about the alleged items or that the tenant expected to be paid storage fees.

The parties agreed that in November 2019, the landlord's lawyer sent a letter to the tenant in which the landlord demanded that the tenant clean up the area surrounding the building and cease using certain storage areas, failing which legal proceedings were threatened.

The tenant sent a reply dated December 9, 2019, demanding payment of the outstanding painting invoice and carrying out of various repairs. The landlord testified this was the first time she had seen the invoice.

The landlord claimed that the demand for reimbursement of non-existent painting costs was retaliation for the landlord's demand about clean-up and unauthorized use by the tenant of storage facilities.

The landlord claimed the tenant vacated without notice and owes her one month's rent for January 2020, a claim which is denied by the tenant.

### Analysis

I have considered all the submissions and evidence presented to me in the 60-minute hearing, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must show that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

### *Painting Costs*

There is conflicting testimony by the parties. The tenant claimed she had an agreement with the landlord that the landlord would compensate the tenant for painting. The tenant claimed significant painting of the unit and another suite. The landlord denied that such an agreement existed, that the tenant did any painting, or that the unit needed painting. The landlord asserted the tenant did not demand payment of an invoice allegedly dated June 1, 2017 until December 9, 2019.

I have carefully considered both versions of events. First, I find the tenant has failed to establish on a balance of probabilities any agreement with the landlord that the landlord would pay for painting of the unit when the tenant moved in. The tenant has submitted no supporting documentary evidence in this regard. The only documentary evidence submitted by the tenant is an invoice from her husband's company dated June 1, 2017 claiming compensation for wages and expenses not paid, which invoice the landlord denied seeing until December 2019. I find it more likely than not that the invoice was created in response to claims by the landlord and not as a valid request for payment. I therefore discount completely any weight to be given to the existence of the invoice.

As well, the tenant asserted that the upstairs suite was painted in addition to the unit. She has submitted no supporting evidence of what portion of the claim related to the unit.

I find it improbable that the tenant would be owed the money for the painting and would continue to pay rent throughout the tenancy without discussions about compensation. I find the landlord's assessment to be likely, that is, that the tenant's claim for compensation arose in retaliation for the landlord's clean-up demand. I prefer the landlord's version of events to that of the tenant.

In considering the four-part test above, I find the tenant has failed to meet the burden of proof on a balance of probabilities regarding the first step, that is, that there is the damage or loss claimed. I am not satisfied that the tenant incurred any alleged damage or loss. I find the tenant has not established that the painting took place.

I therefore dismiss this aspect of the tenant's claim without leave to reapply.

### *Storage costs*

There is conflicting testimony by the parties. The tenant claimed the landlord inconveniently left personal possessions in the unit, necessitating a claim for storage fees at the time the tenant moved out. The landlord denied all aspects of the tenant's claims and asserted the invented claim resulted from the tenant's debt to the landlord for outstanding rent.

I have carefully considered both versions of events. The tenant has submitted no supporting documentary evidence in this regard.

I find the landlord's version of events to be the more likely. That is, that the tenant never

complained to the landlord about any personal possessions, the tenant did not request compensation until the end of the tenancy, and the claim is made to counter the landlord's assertions of a debt for unpaid rent.

In considering the four-part test above, I find the tenant has failed to to meet the burden of proof on a balance of probabilities regarding the first step, that is, that there is the damage or loss claimed.

I therefore dismiss this aspect of the tenant's claim without leave to reapply.

As the tenant has been unsuccessful, I do not award reimbursement of the filing fee.

### Conclusion

I dismiss 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: February 20, 2020

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Residential Tenancy Branch