



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On January 7, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord the Notice of Hearing and evidence package by registered mail on or around January 13, 2020 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package.

The Landlord advised that he served his evidence to the Tenant on May 26, 2020 by email and the Tenant confirmed that she received this evidence; however, she did not receive the digital video evidence as attached by the Landlord. The Landlord advised that he did not check with the Tenant to see if she could view this digital evidence prior to serving it, pursuant to Rule 3.10.5 of the Rules of Procedure. As such, I have excluded this digital evidence and will not consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2018 and ended when the Tenant gave up vacant possession of the rental unit on November 1, 2019. Rent was established at \$1,000.00 per month and was due on the first day of each month. A security deposit was not paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Tenant was seeking compensation in the amount of **\$20,000.00** in renovations that she conducted on the rental unit to make it liveable as per a verbal agreement she had with the Landlord. However, there was no written agreement regarding this arrangement.

The Landlord confirmed that there was a verbal agreement for the Tenant to conduct renovations to the rental unit, but this agreement was part of an option to purchase the rental unit, and the \$20,000.00 was deducted from the total purchase price of what the rental unit would have been ordinarily sold for. A copy of the Option to Purchase Real Estate was submitted as documentary evidence.

The Tenant confirmed that there was no written agreement regarding these renovations, that she could not confirm that this verbal agreement pertained to the rental of the unit, and that she agreed that the amount was taken off the purchase price of the rental unit.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, there is no written agreement between the parties that confirms that these renovations pertained to the tenancy of the rental unit. The consistent evidence appears to indicate that the verbal agreement of renovations was related to the potential purchase of the rental unit and that was reflected in the reduced purchase price in the Option to Purchase Real Estate agreement. As the *Act* does not have jurisdiction over the contract of purchase of real estate, I dismiss this Application without leave to reapply.

As the Tenant was not successful in this Application, I find that she is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on above, I dismiss the 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: June 4, 2020

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Residential Tenancy Branch