



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wynn Real Estate Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant; and
- recovery of the filing fee.

The landlord's agent, the tenant, and the tenant's agent/interpreter attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the filing fee?

Preliminary and Procedural Matters-

At the agent's request, I have added the name of the property management company listed as landlord on the written tenancy agreement to the style of cause page of this Decision.

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of September 1, 2019, a fixed term through July 31, 2021, monthly rent of \$7,500, due on the 1<sup>st</sup> day of the month, and a security deposit of \$3,750 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The tenancy is ongoing.

The landlord's monetary claim is \$10,500, for driveway damage.

In support of their application, the landlord's agent alleged that the tenant has caused damage to the driveway, which was beyond reasonable wear and tear. The agent said the driveway had holes and indentations which could have been caused by the salt used by the tenant during the winter.

The agent said he could not say for sure if the salt caused the damage, but the two companies from which he had quotes said the driveway could not be repaired, and had to be replaced.

The agent said the house was brand new and so the tenant would be the cause of the damage.

Filed into evidence were the two quotes and emails between the two parties.

*Tenant's response, provided by the interpreter –*

The tenant's agent said the house was brand new and no one lived there before. The agent said the tenant, who relocated from another country, moved into the home with her two children.

The agent submitted that it is not possible to survive a winter in this location without using salt. The agent said that the tenant purchased the most expensive product she could find at the home improvement store for use on the driveway.

The agent said the holes in the driveway are closer to the street, which suggests it is the salt being used by the city when they treat the roads in the winter.

The agent said their contacts said the concrete was a poor quality and there should be no reason the entire driveway needed to be replaced.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove their claim with a balance of probabilities, or it is more likely than not.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the obligation to prove their claim and the claim fails.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. It is up to the claimant to verify the value of the loss or damage.

Damage to a landlord's property or other losses are not the responsibility of the tenant unless the tenant has been negligent in the duty owed to the landlord or have breached the Act.

In this case, I find the landlord submitted insufficient evidence to support their claim. The agent could not state with any certainty that the tenant caused the damage to the driveway. The agent said the damage could have been caused by the tenant.

I accept the tenant's evidence that any damage could just as likely as not have been caused by the city's winter road treatment. I arrived at this conclusion as the quotes

from the driveway companies provided by the landlord both included a replacement to the front panel to the sidewalk.

As both parties said the home was brand new, I find it just as likely as not that the driveway construction was a poor quality when the home was built, which may or may not be a warranty type situation for the landlord/owner to explore.

Finally, the landlord submitted no photographic evidence to show the extent of the claimed damage and has provided no proof of a loss.

### Conclusion

For the above reasons, I find the landlord failed to provide sufficient evidence to support their claim for driveway damage caused by the tenant.

The landlord's 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: November 20, 2020

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Residential Tenancy Branch