



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, AAT, PSF, OLC

### 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issue

At the outset of the hearing the tenant advised that she will be moving out by November 30, 2020 and that the only matter left to be resolved is her request for compensation, accordingly; all items applied for save and except for the tenants request for monetary compensation is dismissed without leave to reapply.

### Issue(s) to be Decided

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

### Background and Evidence

The tenant gave the following testimony. The tenant testified that she had two potted rose bushes set aside next to her car that she was planning to take and replant at her parents' home. The tenant testified that the landlord had thrown out the plants without her permission. The tenant testified that she was able to rescue one of the plants but not the other and seeks \$30.00 for the replacement cost.

The landlord gave the following testimony. The landlord testified that she did not throw the potted plants out but merely placed them in the compost bin. The landlord testified that the plants looked dead and that the tenant has not provided sufficient evidence to show the plant was done or the replacement cost. The landlord testified that the upstairs tenant claimed that the plants belonged to them. The landlord testified that the tenant left the potted plants near other items of garbage.

### Analysis

Although the tenant had not made a formal application in regards in having the landlord provide proper access to the property, the matter was discussed. The landlord testified that she always has and will provide proper notice before going to the property and added that she has no intention to go to the property until November 30, 2020 to pick up the keys from the tenant when she moves out. Based on the agreement of the parties, and insufficient history of breaches, I find that a formal order isn't required.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant was requesting \$30.00 for the replacement cost of a rose bush. The tenant did not provide a receipt to reflect that cost or sufficient evidence of the dead plant. As noted above a party must provide the actual cost of their loss to be granted a monetary

award, as the tenant has failed to provide sufficient evidence of any “out of pocket costs”, I hereby dismiss this portion of her application.

Conclusion

The tenant’s application is dismissed in its entirety 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 06, 2020

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Residential Tenancy Branch