



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

On October 26, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement. On December 28, 2020 the Tenant amended her application to increase the monetary claim amount.

The matter was scheduled as a teleconference hearing. The Landlords and Tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss?

### Background and Evidence

The parties testified that the tenancy began on December 1, 2019. Rent in the amount of \$1,475.00 was due to be paid to the Landlords by the first day of each month. A security deposit of \$737.50 and a pet damage deposit of \$737.50 was paid by the Tenant to the Landlord. The tenancy ended on October 2, 2020.

The Landlords and Tenant stated that this is the fifth dispute resolution hearing regarding this tenancy that the parties have participated in. After reviewing the case management system, I confirmed that there are four previous decisions directly related to the parties. In the most recent hearing on November 5, 2020, the Landlord was granted a monetary order against the Tenant in the amount of \$3,420.16 for unpaid rent.

The Tenant provided a monetary order worksheet detailing her claims as follows:

Cleaning of stove hood fan, floor vents, fridge, light covers	\$120.00
Non-use of Fireplace	\$1,000.00
Replacement of Dry Foods	\$70.00
Drain Cleaner Costs	\$40.00
Loss of Use of Toilet	\$400.00
Loss of Heat for 1 Week	\$200.00
total	<b>\$1,830.00</b>

The Tenant's amended application indicates she is seeking compensation for cleaning a back-parking lot and removal of waterlogged furniture. The application also includes the loss of use of shower and sink and non-use of a storage shed.

### Cleaning

The Tenant provided testimony that when she moved into the rental unit it was not clean. She testified that she performed four hours of cleaning and is seeking compensation of \$120.00 from the Landlords.

The Tenant was asked whether there was any agreement reached with the Landlord that she would be compensated for cleaning the unit and she replied "no".

In reply, the Landlords provided testimony that the parties participated in a previous hearing where cleaning of the unit was dealt with. The Landlord testified that the parties reached an agreement about the cleaning at that hearing.

After reviewing the case management system, I find that the parties reached a settlement agreement regarding the cleaning of the unit.

I find that the Tenant's claim to be compensated for cleaning fails. The Tenant did not reach an agreement with the Landlord to be compensated for cleaning the unit prior to performing the cleaning. The matter was subsequently resolved via settlement.

### Fireplace

The Tenant provided testimony that she was unable to use a fireplace located in the rental unit. She testified that the Landlords' advertisement for the rental unit includes a reference to a wood burning fireplace and in addition, the condition inspection report prepared by the Landlord mentions that the fireplace works.

The Tenant testified that the fireplace was inspected in January 2020 and was not approved for use. The Tenant testified that the Landlord did not reduce the monthly rent in consideration of the loss of this service or facility. The Tenant is seeking to recover \$1,000.00 which is \$100.00 per month for the 10 months of the tenancy.

In reply the Landlords provided testimony that the tenants claim is frivolous and that the tenancy agreement on page two does not indicate a fireplace was included. The Landlord testified that they had the fireplace inspected and it was not safe to use. The Landlord confirmed that they placed the advertisement that included a reference to a fireplace.

### Food Replacement

The Tenant provided testimony that there was a silverfish infestation in the rental unit, and she needed to throw away \$80.00 of dry food. The Tenant testified that the Landlord arranged for a company to come in and deal with the issue after she moved out. The Tenant did not provide any documentary evidence of the food or silverfish and no receipt for replacement cost of the goods.

In reply, the Landlords' provided testimony that they disagree with the claim. The Landlord stated there is no basis for the claim and pointed out that there are no receipts for replacement of the food.

### Drain Cleaner

The Tenant provided testimony that the drains in the bathtub, kitchen sink and bathroom sink were plugged when she moved into the unit. She testified that she purchased \$40.00 worth of drain cleaner and is looking to have the Landlords reimburse her for this cost. The Tenant did not provide a receipt showing the purchase of drain cleaner and testified that she did not ask the Landlord for authorization to purchase the drain cleaner prior to purchase.

In reply, the Landlords testified that on January 3, 2020 they called a plumber who dealt with the drain issue. The Landlords testified that they never informed the Tenant that they would pay her for the purchase of drain cleaner.

### Toilet

The Tenant is seeking \$400.00 for loss of use of the toilet in the rental unit from September 21 to September 23, 2020. The Tenant testified that on September 21, 2020 she informed the Landlord about a leak around the base of the toilet. She testified that she was informed to not use the toilet until September 23, 2020. She testified that she used a neighbors bathroom and one at a local coffee shop.

When the Tenant was asked to explain how she determined the amount of her claim, she stated that she cannot recall how she determined the amount.

In reply, the Landlords testified that they called a plumber who attended the unit on September 22, 2020 and fixed the problem.

The Landlord stated that there is no justification for a \$400.00 claim.

### Heat

The Tenant is seeking \$200.00 from the Landlord for loss of heat for a one-week period. The tenant testified that in September 2020 she decided that it was not a good idea to turn the heat on in her rental unit because she believed that silverfish were in the heating vents. She is seeking compensation for her decision to not use the heat for this reason.

In reply, the Landlords testified that the Tenants claim is unsubstantiated.

### Parking Area

The Tenant is seeking \$30.00 from the Landlord for cleaning a parking area and removal of a piece of furniture. The Tenant testified that there was no agreement made with the Landlord that she would be compensated for cleaning the parking area or removing the furniture.

In reply, the Landlords testified that the tenants claim is unsubstantiated as there was no agreement for her to perform this work and be compensated by the Landlord.

### Storage Shed

The Tenant is seeking \$300.00 from the Landlord for loss of use of a storage shed. The Tenant testified that when she viewed the suite the Landlord showed her an old metal shed that would be emptied and available for her use. The tenant testified that she never had use of the shed. She testified that she did not rent a storage locker/ space elsewhere. She testified that she mentioned using the storage shed once at the start of the tenancy and did not raise the issue again afterwards.

In reply, the Landlord testified that there are two sheds on the property, and they asked the other tenant to make room for the Tenant for storage. The Landlord testified that this was the only conversation they had with the Tenant regarding a storage shed.

### Loss of Use of Shower and Sink

The Tenant is seeking \$300.00 from the Landlord for loss of use of the shower and sink for 8 days. The Tenant testified that she was not able to use the shower and sink from December 8, 2019 to December 16, 2019. The Tenant testified that the Landlord had a plumber repair the problem on December 16, 2019.

The Tenant testified that she arrived at her claim amount by estimating what the loss is worth.

In reply, the Landlords testified that there was an issue with the shower and sink and they contacted a plumbing company who attended the unit as quickly as possible. The Landlord confirmed that the tenant informed them of the issue on December 8, 2019 and the plumber repaired the issue on December 16, 2019.

### Power washing

The Tenant is seeking \$20.00 from the Landlord for power washing the deck. She testified that she did not ask the Landlord to be compensated prior to performing the work.

The Landlord stated that this is the fifth hearing they have attended. The Landlord stated that the Tenants claims are frivolous and unsubstantiated and that she owes them money from a previous hearing in November 2020.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

*Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:*

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental.*

*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.*

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

The Tenant has made a number of claims where she is seeking compensation for performing work or purchasing items where she did not reach an agreement with the Landlord that she would be compensated or have her costs refunded. It is not reasonable to expect a Landlord to pay compensation when there has not been a

discussion and agreement first. The Tenant's following claims are dismissed without leave to reapply:

- Cleaning
- Dry Foods
- Drain Cleaner
- Parking Area
- Power washing

### Fireplace

I have reviewed the advertisement and condition inspection report and I find that the advertisement indicates that the rental unit for \$1,475.00 includes a wood burning fireplace. The condition inspection report indicates the Landlords rated the fireplace as being in good condition.

I have reviewed the standard form type of tenancy agreement and I find that there is no mention whether or not rent includes use of a fireplace. I find that the fireplace was a facility that was included in the rent. I find that the Tenant suffered a loss of value in the tenancy when she was not able to use the fireplace. I find that the Landlords are required to compensate the Tenant for the loss.

I have considered the amount of the Tenant's claim. The tenancy continued for 10 months and the Tenant did not have use of the fireplace for the 10 months. The Tenant did not provide any testimony explaining how often she would have used the fireplace. I also note that in the summer months it is likely the fireplace would not have had regular use. In consideration of these factors, I find that the Tenants claim amount is high. I find it is reasonable to award the Tenant \$50.00 each month for the loss of the fireplace.

I award the Tenant the amount of \$500.00.

### Toilet

I find that the Tenant lost use of the bathroom toilet for two days. I find that her claim amount of \$400.00 is highly inflated. While I accept that the Tenant was inconvenienced by having to use the bathroom of a neighbor, I find that she has not established the value of her loss. I award the Tenant a nominal damages award of \$20.00 for loss of use of the toilet for two days.

### Heat

I find that the Landlord is not responsible for failing to provide heat to the rental unit. The Tenant chose to not use her heat because she believed it was a good idea due to the presence of silverfish.

The Tenant's claim to be compensated by the Landlord on this issue is dismissed.

### Storage Shed

I find that the Tenant has not established that she has suffered a loss due to non-use of a storage shed. She testified that she did not rent a storage shed elsewhere and I find that she did not pursue the issue with the Landlord.

The Tenants claim to be compensated by the Landlord for non-use of a storage shed is dismissed.

### Loss of Use of Shower and Sink

I find that the Tenant lost use of a shower and sink for eight days. I find that the Tenants claim amount of \$300.00 is inflated. While I accept that the Tenant was inconvenienced by not having use of the shower and sink, I find that she has not established the value of her loss. For example, the Tenant could have used a shower at recreation center for a week at much lower cost than she is seeking. An applicant has to mitigate the loss being claimed. I award the Tenant the amount of \$100.00 for loss of use of the shower and sink for eight days.

### Monetary Award

The Tenant established a monetary claim in the amount of \$620.00. I grant the Tenant a monetary order in the amount of \$620.00.

### Conclusion

The Tenant's application was partially successful.

The Tenant suffered a loss of use of a fireplace and a temporary loss of a toilet, shower, and sink. The Landlords are responsible to compensate the Tenant for the loss.



I grant the Tenant a monetary order in the amount of \$620.00.

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 24, 2021

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Residential Tenancy Branch