



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, MNDCT, OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 22, 2020 (the “Application”). The Tenant applied as follows:

- For a repair order
- For compensation for monetary loss or other money owed
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Tenant appeared at the hearing. The Agents for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record this hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

At the outset of the hearing, there was a discussion about the Application and what the Tenant was seeking as of the date of the hearing. The Tenant confirmed they were still seeking compensation. The Tenant advised that they want an order about their patio door lock being fixed. The Agents confirmed they were prepared to deal with the patio door lock issue and therefore I considered this. The Tenant sought to raise issues that were not reflected in the Application and I did not permit the Tenant to do so. The Tenant was required to outline all issues in the Application or submit amendments to the Application to add issues. The Tenant was unable to point to where in the Application the additional issues were outlined. I did not permit the Tenant to address issues not reflected in the Application.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to a repair order in relation to the patio door lock?

### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started November 01, 2020.

#### ***Patio Door Lock***

The Tenant testified that the patio door in the rental unit has two locks, a deadbolt and a handle lock. The Tenant testified that the handle lock is broken and does not work. The Tenant relied on a photo in evidence. The Tenant testified that they sent the Landlord an email about the broken lock and spoke to an agent for the Landlord on the phone about the broken lock.

The Agents for the Landlord denied that the patio door lock in the rental unit is broken. The Agents did not point to evidence submitted to support their position.

#### ***Compensation***

The Tenant sought \$600.00 in compensation for issues relating to the bathroom in the rental unit.

The Tenant testified that they were not able to use the bathtub for four months because it was disgusting, had duct tape all over it and was peeling.

The Tenant further testified as follows. The bathroom was renovated. The renovations took longer than they should have. The renovations should have taken three days and instead took three to four months. It was not until they filed the Application that the Landlord took steps to renovate the bathroom. They have not had any quiet enjoyment of the rental unit because of constant interruptions in relation to the bathroom

renovation. They did not know the bathroom renovation was going to take place until the move-in inspection. They were not able to use the bathroom, or portions of the bathroom, during the renovations and could not use the bathtub or shower for four days. The Landlord has aggravated the situation by doing things such as spraying the rental unit for ants in winter.

Agent L.H. testified as follows. The Landlord offered to replace the bathtub in the rental unit and the Tenant agreed to this. The Landlord was in the process of getting contractors to do the renovation when the Tenant started sending the Landlord emails and pushing the Landlord to do the renovations. The renovations took time given the pandemic because not all contractors were available and working. The Landlord was able to find a contractor willing to do the renovation, but this took time. The renovation took two days. Portions of the bathroom had to be custom made. The Landlord had to give notice to enter the rental unit which also delayed the process. The Tenant did not experience loss. The Tenant was able to use the bathroom during the renovations.

The Tenant submitted the following relevant evidence:

- Emails between the parties
- Photos
- A warning letter dated January 26, 2021 in relation to the Tenant declining entry into the rental unit
- Notices of entry

I note that many of the photos do not show what is indicated in the file name. For example, one photo is named "toilet" but is not of a toilet and appears to be of a ceiling light. Further, I am not able to tell what some of the photos are of due to the quality of the photo or how close the camera is to the object.

The Landlord submitted the following relevant evidence:

- Photos
- Written submissions
- Invoices for the bathroom renovations
- A note from the Tenant about entering the rental unit
- Notices of entry
- The warning letter to the Tenant
- Emails between the parties

### Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When 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 onus to prove their claim and the claim fails.

### ***Patio Door Lock***

Section 32 of the *Residential Tenancy Act* (the “Act”) states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The parties disagreed about whether the handle lock on the patio door is broken. There are emails in evidence showing the Tenant asking that the lock be fixed. The Agents did not point to evidence to support their position that the lock is working or has been fixed. Based on the Tenant’s testimony and the emails in evidence, I am satisfied the lock is not working.

Pursuant to section 62(3) of the *Act*, the Landlord is ordered to repair or replace the handle lock on the patio door of the rental unit so that there is a working handle lock on the patio door. This is to be done by April 27, 2021.

## ***Compensation***

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

A tenant's right to quiet enjoyment is protected by section 28 of the *Act* which states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises...

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The Tenant seeks compensation for two main issues. First, not being able to use the bathtub until the bathroom renovation was done. Second, disruptions due to the bathroom renovation and how long the renovation took.

The Tenant submitted a photo showing a chip and cracks in the bathtub lining. The Landlord submitted a photo of the bathtub prior to the renovation; however, it does not show the bottom of the bathtub. The Landlord submitted the invoice for the bathroom renovation showing the bathtub was replaced January 21, 2021. The notices of entry also show the bathtub was replaced January 20 and 21, 2021. The Landlord submitted the move-in Condition Inspection Report (the "CIR") showing the bathtub and shower were noted as "old". The CIR does not show that the bathtub or shower needed to be repaired or replaced at the start of the tenancy.

Although I am satisfied based on the photo that there was a chip and some cracks in the bathtub lining, I find the Tenant accepted the rental unit in this condition and did not note on the CIR that this issue needed to be addressed. I acknowledge that the parties agreed the bathroom would be renovated; however, this is not noted as a requirement on the CIR. In the circumstances, I find the Tenant accepted the rental unit with the bathtub as it was and am not satisfied the Tenant is now entitled to compensation for not being able to use the bathtub. I find the repair or replacement of the bathtub would have been noted on the CIR if the Tenant had deemed it to be in such a state of disrepair that it could not be used. I am therefore not satisfied the Tenant did deem the bathtub to be in such a state of disrepair that it could not be used and I decline to award the Tenant compensation for the claim of loss of use of the bathtub.

There is no issue that the bathroom was renovated. The parties disagreed about how long the renovation took and the disruption caused by the renovation.

Based on the notices of entry and invoices, I am satisfied that the following occurred:

- November 24, 2020 – bathtub measurement
- January 20 and 21, 2021 – bathtub installation
- February 01, 2021 – drywall repairs
- Possibly February 01, 2021 – cabinets installed (unclear if this is installation date or invoice date)
- February 02, 2021 – bathroom floor repair
- February 16, 2021 – baseboard repair

Based on the above, I am satisfied that agents for the Landlord or contractors entered the rental unit six days from November of 2020 to February of 2021 in relation to the bathroom renovation. I am also satisfied that the actual renovation started January 20, 2021 and ended February 16, 2021, less than one month later. I do not find the number of times agents for the Landlord or contractors entered to be excessive or unreasonable. Nor do I find the length of time over which the entries occurred unreasonable. In coming to this conclusion, I have considered that we are currently in a pandemic and have accepted the submission of Agent L.H. that this caused the renovation to take longer than usual. I find it reasonable that the pandemic caused the renovation to take longer than usual.

The Tenant has not submitted compelling evidence such as photos, videos or witness statements to support the submission that portions of the bathroom were unusable for a period of time during the renovations. In the absence of further evidence, I am not

satisfied portions of the bathroom were unusable for any unreasonable or extended period of time during the renovations.

I have considered the Tenant's right to quiet enjoyment as well as the Landlord's right and responsibility to maintain the rental unit. I am not satisfied based on the evidence provided that the bathroom renovation took an unreasonable or inordinate amount of time. I do not find that there is compelling evidence before me that the bathroom renovation resulted in loss of use of the bathroom for any extended period. I do not find that there is compelling evidence before me that the bathroom renovation caused more than the usual disruption. I am not satisfied based on the evidence provided that the bathroom renovation amounted to a substantial interference or that the disturbance was frequent and ongoing. Nor am I satisfied that the Tenant was subjected to unreasonable disturbances.

In the absence of further evidence, I am not satisfied the Tenant has proven a breach, loss or the amount of loss. Therefore, I decline to award the Tenant compensation and this request is dismissed without leave to re-apply.

#### Conclusion

**Pursuant to section 62(3) of the Act, the Landlord is ordered to repair or replace the handle lock on the patio door of the rental unit so that there is a working handle lock on the patio door. This is to be done by April 27, 2021.**

The Tenant's request for compensation is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 31, 2021

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Residential Tenancy Branch