



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, MNDCT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”) requesting an Order for the Landlord to comply with the *Act*, and for a monetary order for compensation. The matter was set for a conference call.

An Agent for the Landlord (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenant testified that they had been served with the Landlord’s documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

### Preliminary Matter – *Tenant’s evidence*

During the hearing, the Landlord testified that they had not been served with an evidence package from the Tenant.

The Tenant testified that they had served the documents included in their evidence package to the Residential Tenancy branch to the Landlord before filing for these proceedings. The Tenant testified that they had not served an evidence package specific to these processing the Landlord.

Sections 3.1 and 3.14 of the Residential Tenancy Branches Rules of Procedure state the following regarding the service of evidence:

**3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

**“3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.”

I accept the testimony of the Tenant that they did not serve the Landlord with the evidence package that I have before me in these proceedings as they had given the Landlord’s agent a copy of these documents during the course of their interaction before the Tenant applied for these proceedings.

As the Responded, the Landlord was not served with the evidence package that was submitted with their application, in accordance with the rules of procedure, I will not consider the Tenant's documentary evidence in my final decision for these proceedings.

### Issues to be Decided

- Should the Landlord be ordered to comply with the Act?
- Is the Tenant entitled to monetary compensation under the *Act*?

### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on February 1, 2016, that rent in the amount of \$950.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$475.00 security deposit and a \$100.00 pet damage deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified the rental unit they are in has very old carpets that the Landlord has refused to replace, that the plumbing in the rental building backs up, clogging their sink almost daily, that there is insufficient hot water, and their patio door has a gap at the bottom that allows cold air to get into the rental unit. The Tenant testified that they have written to the Landlord numerous times requesting that the carpets be replaced, the plumbing be maintained properly or replace and that their door is repaired but that the Landlord has refused their request. The Tenant testified that they are seeking an order that the Landlord complies with the *Act* and make the required repairs to the rental property and that they are given \$2,000.00 in compensation due to the poor condition of the rental unit and the Landlords refusal to make the required repairs.

The Landlord testified that the building is old but that they do everything that is required to maintain the building to local codes, and they have attended the rental unit each time the Tenant has requested a repair and made all repairs as required. The Landlord testified that they agreed the building had limited hot water but that the tank is only three years old and works well. The Landlord testified that they maintain the build but that

they will not be making the renovations or upgrades that the Tenant is requesting as they are not required.

### Analysis

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

The Tenant is claiming for compensation in the amount of \$2,000.00 in the recovery of a portion of their rent payments due to the Landlord's refusal to make repairs to the rental property and that the Landlord be ordered to comply with the *Act* by making their requested repairs.

Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

In order to determine if the Tenant is entitled to compensation and if the Landlord should be ordered to comply with the *Act*, I must first determine if there had been a breach of the *Act* by the Landlord in how they have handled the Tenant's requests for repairs. Section 32 of the *Act* states the following regarding repairs and maintenance of the rental property:

***Landlord and tenant obligations to repair and maintain***

- 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.*
- (2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (3) *A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) *A tenant is not required to make repairs for reasonable wear and tear.*
- (5) *A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

During the hearing, I heard contradictory testimony from both parties regarding the maintenance of the rental property. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the Tenant who filed this claim and who holds the burden of proof in these proceedings.

After reviewing the testimony and the documentary evidence accepted into these proceedings, I find that there is insufficient evidence to convince me that the Landlord had not repaired or maintained the rental unit as required when request by the Tenant or that the current condition of the rental is so poor that repairs need to be ordered and compensation paid to the Tenant.

Overall, I find that the Tenant has not provided sufficient documentary evidence, to satisfy me that the Landlord had breached the *Act* in any way during this tenancy. In the absence of a breach of the *Act* by the Landlord, I must dismiss the Tenant's claim for compensation and an order to comply with the *Act* in their entirety.

Conclusion

The Tenant'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: October 15, 2021

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Residential Tenancy Branch