



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT  
                                 MNDCT

### Introduction

This hearing was convened by way of conference call in response to two Applications for Dispute Resolution filed by the Tenant on June 15, 2021 and October 25, 2021. The Tenant applied for compensation and recovery of the filing fee on the file ending 719. The Tenant applied for compensation on the file ending 950.

The Tenant appeared at the hearing with N.P., an articling student. The Tenant appeared for Tenant D.P. who was only named on the file ending 719. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant and N.P. I told the Tenant and N.P. they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant provided affirmed testimony.

The Tenant testified that they could not serve their materials on the Landlord in relation to the file ending 719 and therefore are withdrawing this file. The Tenant confirmed they are proceeding on the file ending 950. I allowed the Tenant to withdraw the file ending 719 as there is no prejudice to the Landlord in allowing this. I proceeded to hear the Tenant and N.P. on the file ending 950.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant's evidence.

The Tenant testified that the hearing package and their evidence were sent to the Landlord by registered mail to the rental unit address on October 26, 2021. The Tenant testified that the Landlord moved back into the rental unit when the tenancy ended and they confirmed this by driving by the rental unit which had the Landlord's vehicles in the

driveway. The Tenant submitted documentary evidence with Tracking Number 347 on it and confirmed this relates to the hearing package and evidence. I looked Tracking Number 347 up on the Canada Post website which shows the package was delivered to the Landlord October 27, 2021.

Based on the undisputed testimony of the Tenant, the documentary evidence of service and the Canada Post tracking information, I am satisfied the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post tracking information, I find the Landlord received the package October 27, 2021. I also find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant and N.P. were given an opportunity to present relevant evidence and make relevant submissions. I have considered the testimony, submissions and documentary evidence provided. I have only referred to the evidence I find relevant in this decision.

#### Issue to be Decided

1. Is the Tenant entitled to compensation?

#### Background and Evidence

The Tenant submitted a written tenancy agreement. The tenancy started October 27, 2020 and was a month-to-month tenancy.

The Tenant testified that the tenancy ended in January of 2021.

The Tenant sought \$8,224.55 for vet bills incurred when their dog severed their tendon on a pane of glass that was in the backyard of the rental unit. N.P. advised that the Tenant had repeatedly asked the Landlord to remove junk and unsafe items from the backyard and that the Landlord only removed some of the items. N.P. advised that the Tenant’s dog was injured November 27, 2020. N.P. advised that the Tenant is aware that their dog was injured due to the pane of glass in the backyard because the Tenant found blood and fur on the glass. N.P. advised that the Tenant’s dog required surgery and rehabilitation after the injury. N.P. submitted that the dog’s injury was due to the negligence of the Landlord and the Landlord’s failure to comply with section 32(1) of the

*Act*. N.P. referred to photos in evidence of the dog's injury as well as vet bills in evidence showing the loss that occurred. N.P. submitted that the Tenant tried to mitigate their loss by getting medical treatment for their dog promptly and by informing the Landlord of dangerous objects on the property.

The Tenant confirmed the Landlord knew they had a dog and knew they let their dog out in the fenced backyard.

The Tenant submitted the following documentary evidence:

- Text messages between the parties
- Photos of the pane of glass
- Photos of the dog's injuries
- Photos of the backyard of the rental unit
- A demand letter with vet bills attached
- Vet bills

### Analysis

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.

Section 32 of 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...

(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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim.

The text messages in evidence do not support the Tenant's position. The text messages show that the parties discussed the Landlord removing items that the Tenant had put under the rental unit or deck. The text messages show that the Landlord did remove these items and the Tenant did not raise any further issue with this until after their dog was injured (see page 2 of text messages, text from Tenant at 12:13 p.m.). The text message from the Landlord dated November 27, 2020 shows that the Tenant's dog was injured and then the parties discussed the Landlord removing further items from the backyard.

The photos in evidence show that the Tenant's dog was injured by a large piece of glass on a piece of wood beside a glass greenhouse in the backyard of the rental unit. The Tenant has not provided sufficient evidence showing how the glass got where it was or when this occurred. I note that the Tenant had been living in the rental unit for one month when their dog was injured. The Tenant has not provided sufficient

evidence showing that the glass was there at the start of the tenancy or that the Landlord was aware of the glass.

The text messages in evidence do not support that the Tenant made the Landlord aware of the glass or took issue with the greenhouse or items in it or around it until after their dog was injured. I also note that, in a text message sent after their dog was injured, the Tenant specifically stated, "I was okay with waiting for you to sell them but after this happening, I am really not comfortable with anything in the back there" (emphasis added). This text message indicates that the Tenant had not previously asked the Landlord to remove the items that caused the dog's injury or, if the Tenant did, the Tenant did not ask that the Landlord do so immediately.

I acknowledge that the Landlord is required to maintain the property in accordance with section 32 of the *Act*. However, it is not reasonable to expect the Landlord to remove dangerous items from the property that they are not aware of. I note that the text messages between the parties show that the Landlord did not live at the rental unit address during the tenancy and therefore I am not satisfied based on the evidence provided that the Landlord should have been aware of the pane of glass in the backyard.

Further, I find there was some responsibility on the Tenant to check that the yard was safe for their dog and to notify the Landlord if there were dangerous items that required removal. The text messages show that the Tenant did not take issue with the glass or other items around the greenhouse until after their dog was injured.

In the circumstances, I am not satisfied the Landlord breached section 32 of the *Act* because I am satisfied the Landlord removed the items discussed between the parties and am not satisfied the Landlord was aware of dangerous items in the backyard or asked to remove items that resulted in injury to the Tenant's dog.

Given I am not satisfied the Landlord breached the *Act*, I am not satisfied the Tenant is entitled to compensation. The Application is dismissed without leave to re-apply.

### Conclusion

The Application 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: January 10, 2022

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Residential Tenancy Branch