



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RP, RR, FFT

### Introduction

The Tenants (hereinafter, the “Tenant”) filed their Application for Dispute Resolution (the “Application”) on February 24, 2022. They seek the following:

- a) compensation for monetary loss or other money owed
- b) reduction in rent for repairs, services or facilities agreed upon but not provided
- c) repairs made to the rental unit, after contacting the Landlord in writing
- d) reimbursement of the Application filing fee.

The matter proceeded by hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 6, 2022.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present affirmed testimony during the hearing.

### Preliminary Matter – Landlord’s service of their prepared evidence

At the outset of the hearing the Landlord confirmed they received notice of this hearing via registered mail. They also received the Tenant’s prepared evidence.

The Landlord provided their evidence to the Tenant via registered mail. They provided a record of that in the form of an image of that envelope with the tracking number label attached. The tracking history shows the item was available for pickup on May 20, 2022. This meets the seven-day restriction for a respondent’s evidence submitted to

the Residential Tenancy Branch, and to the Applicant here, as set out in the *Residential Tenancy Branch Rules of Procedure* Rule 3.15.

### Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed upon, but not provided?

Is the Tenant entitled to repairs, or provision of services/facilities required by the tenancy agreement/law?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

In the hearing I confirmed the basic information about the tenancy agreement in place between the parties. The tenancy, as printed in the agreement, started on March 1, 2020. The Landlord and the Tenant each provided a copy of the agreement signed on February 25, 2020. This provides for a rent amount of \$2,350 per month. The Tenant paid \$1,175 as a security deposit.

The 13<sup>th</sup> clause of the agreement, on Page 2 states:

The Landlord shall not unreasonably delay in causing necessary alterations or repairs to be done with due diligence, and shall supply premises and services according to statutory standards . . .

And the 14<sup>th</sup> clause states:

The Tenant agrees . . . that he will not make any changes or alterations to the Premises, or erect partitions or paper the walls or ceiling or otherwise decorate without the consent in writing of the Landlord . . .

Clause 30 adds information about locks:

. . .the present lock shall not be altered without the written permission of the Landlord. Any alterations made without approval will be returned to the original condition and costs for same will be borne by the Tenant.

At the outset of the hearing the Tenant described that they communicated with one agent of the Landlord; however, two other individuals were in that role up until this hearing. The first agent never communicated to the Tenant that another would take on that role, and the current agent (who attended this hearing) only had direct contact with the Tenant approximately two months prior to the hearing.

In their written submissions, the Tenant described moving in some personal items prior to the tenancy start date. This was with the original move-in date of March 15<sup>th</sup>, set because the Landlord was completing renovations at that time. After acquiring the keys, the Tenant was informed that the contractors were no longer available due to the public health restrictions in place at that time. With work yet to be completed, the Tenant asked the agent if they could “get professionals in and submit receipts, [and] [the agent] said that would be fine.”

Both the Landlord and the Tenant submitted a copy of the Condition Inspection Report. This bears the Tenant’s signature stating they agreed that the report, as created on February 25, 2020, “agree that the report fairly represents the condition of the rental unit.” The repairs listed “to be completed at the start of the tenancy” include bathroom faucet & plug, kitchen light, bathroom light, garburator, door seal, paper hanger need reattached, kitchen drawer.”

The Tenant stated they had no reason to question that the renovations would be completed. They were aware of the “cosmetic deficiencies” that were apparent at the time they signed their agreement. Upon their move in, the appliances, the electrical, and the plumbing became problematic. As stated in their submission: “The sheer amount of things that ended up being non-functional made us quickly regret moving in, however by this time the pandemic was in full swing and we just tried to make the best of it.”

The Tenant’s claims here focus on the work they had completed, in “an apartment that clearly was not yet ready for habitation”. They started to present this to the agent at the time; however, from the Tenant’s perspective the Landlord was not willing to reimburse for what the Tenant asked for. They also describe the Landlord’s hesitation to repair items, and at one point the Tenant withheld rent to prompt the Landlord to respond. In the hearing the Tenant described the agent’s immediate response at the outset (“we’ll get our guys in”), followed by a delay (“our guys are not comfortable”). Then came the

Landlord's consent to the Tenant paying for their work on their own and providing receipts to the Landlord.

After work commenced at the Tenant's own procurement of contractors, they kept discovering items needing replacement or repair. One piece of this was electrical, and when the electrician visited and discovered a number of issues, the Tenant requested work to be completed instead of sending that serviceperson away and then having to re-start the process. A similar process ensued for work on plumbing. The Tenant described "pushback" from the Landlord's agent who questioned what completed repairs were all about, inquiring on billed amounts.

In combination with this was faulty appliances. The Tenant submits the process of the Landlord replacing or repairing appliances "should have been started when we signed the lease". They described the oven as non-functional, and not being replaced until October 2020. The fridge was variable in its maintained temperature. The oven hood was replaced; however, the exterior vent blockage continued to be a problem up until the time of the hearing and formed part of the Tenant's request for repairs to the Landlord.

The Tenant provided three documents titled "Damage Overview" documents: short, longer, and full. This includes items noticed "on or before day of lease signing", within 2 weeks after signing the lease, and further items needing repair over the ensuing months. The Tenant submitted 465 separate pieces of evidence in total in support of their claim.

On their Application, the Tenant provided the amount of \$15,027.32. A separate document identifies this amount as "compensation – out-of-pocket". Another document has the single statement: "hours – compensation – 64 hours." Elsewhere the Tenant explained that they on their own fixed "apartment specific deficiencies."

They provided several receipts in their evidence:

- Mould inspection report - \$393.75 – for a non-functioning bathroom fan leading to "Many areas of ingress for water to enter into walls"
- Bicycle storage costs: \$144.75 x 19 months = \$2,750.25" – the locker shown to the Tenant at the start of the tenancy was for the adjacent building and there was no space available for the rental unit building. This is the cost of a rental storage locker.
- Bolt cutter rental: \$34.26

- General receipts: 16 in total for varying amounts – “General receipts for fixing things. Too many to list.”
- 6 separate receipts for fans – the Tenant provided a description of these purchases as being tied to the range hood duct issue. This was to “augment air flow in bathroom to cope with humidity”. The Tenant added a timer to the bathroom fan.
- 3 separate receipts for towel racks – the Tenant described the towel racks in place at the start of the tenancy as being held in place with tape, falling off within the first few days of use. In the “longer” damage overview, the Tenant described this as the bathroom towel rack falling off within the first week.
- \$3,365.25 plus various other receipts that are “tools for painting” – this was to repaint the rental unit that was “covered in red and blue paint” with multiple other shades for the neutral paint areas. The Tenant wrote: “We never originally submitted these bills for reimbursement . . . we were willing to deal with cosmetic damage on our own dime.”
- A plumbing receipt for \$180.60. The Tenant wrote “75% of drains not working” The bathtub drain was “clogged nearly completely”. The Tenant only noticed this months after the start of the tenancy because they “don’t use a tub.”
- 2 receipts for vanity lights in the bathroom, and 1 receipt for replacement of the bathroom mirror. The Tenant “made a call in the moment [i.e., at the time of the electrician’s visit] to . . . remove [the mirror].”
- 4 receipts for cleaning – described by the Tenant as “modified . . . to comply with Property Manager’s limitations agreed upon when signing lease.” The Tenant described the unit as “covered in renovation dust and grime from the last tenants.” They agreed with the agent on the day of signing the tenancy agreement that the Tenant could bring in cleaners at their own cost, to be reimbursed at no more than \$500. The total bill was more; however, the Tenant only submitted \$500 to the agent for reimbursement.
- 6 electrical repair receipts – noting “approximately 50% of the electrical in the apartment was not functional” – includes the pulling of 46 metres of cable because “100% of communication lines were unusable.” The Tenant described the electrician as discovering more hazards every time they inspected something. This included an inspection/test of every outlet to see which ones were functioning and safe.
- A receipt for rekeying the front door deadbolt – the Tenant labelled this piece as the “standard part of a new rental.” This was having the lock “retumbled for security upon move in.”

In sum, the Tenant is seeking what they believe is “amicable and reasonable compensation” for matters that should not have been their concern. They noted the “heavy resistance on both compensation and the completion of remaining critical items to be fixed.” They submitted the Landlord acted in bad faith, and “probably knew about all the deficiencies before renting to us.”

The Landlord’s response to the Tenant’s Application, in essence, is that the Tenant did not receive authorization from the Landlord for renovations or repairs. As stated in the Landlord’s comprehensive written response: “The Tenant never requested repairs in writing and there was never a written agreement about this.”

In May 2020, the Landlord sought any written agreement that the Tenant had from the prior representative authorizing repairs; however, the “tenant just ignored [the Landlord’s request].” These are two emails in the Landlord’s evidence, referring to the Tenant’s query on a refund on April 28, and May 26, 2020. This was the carryover from one Landlord representative to the next, and the new representative asked the Tenant to “send the emails that show you were authorized to do the Repairs etc.” The Landlord repeated their request to the Tenant for that information on May 28, 2020.

The Tenant had asked the Landlord for \$2,429.59 in reimbursement, providing a spreadsheet to the Landlord. The Landlord offered \$1,625.69 compensation, paying this amount by cheque to the Tenant. The Tenant was holding the cheque, and the Landlord had no idea until the Tenant served notice for this hearing. The Tenant now claims \$15,027.32. The Landlord submitted that the Tenant did not show their calculation for this amount, and submitted receipts for all personal items, meaning the Tenant is not being honest in this hearing process. They provided examples of bathroom sprinklers (which are already in place in the rental unit), fire extinguisher (for the Tenant’s own barbeque), a barbeque stand, and miscellaneous items that are either tools or storage pieces.

In detail, the Landlord provided their submissions on various points on the Tenant’s “repetitive descriptions”:

- Cleaning: there was never agreement from the Landlord on \$500 of cleaning. They calculated \$390.60 for their offer which represents four hours of cleaning. The “Tenant should not ask [the cleaning company] to make up a receipt of \$500 and submitted to us.”

- Plumbing: The handyman was willing to assist the Tenant with their request; however, the Tenant would not allow it. The Landlord included the Tenant's request for \$180.60 in their own calculated amount.
- Electricity: The Condition Inspection Report noted one single light; however, the Tenant replaced all four lights with a new style. This was without the Landlord's approval or knowledge. The Landlord included 5 hours of labour for replacement of 14 sockets (as opposed to the 10 hours listed). The Landlord offered \$704.11, and also \$23.29 for the electrician's parking.
- Appliances: The Landlord purchased a new oven for the Tenant. The Tenant did not set the standard level on the refrigerator for it to work properly. The Tenant specified a particular model of range hood that was their preference; the Landlord speculates that the Tenant complained about it here because they did not get the choice they wanted. The Tenant removed the washer/dryer without informing the Landlord that there was a problem. The Landlord notes they purchased a new fridge and range hood even though these were not necessary.
- Countertop: The Tenant painted the wooden surface without approval. The Tenant also seeks to "customize" the surface with glass which should be their own expense.
- Bedroom sliding door: The Tenant did not understand the configuration of this mechanism.
- Patio Door: Fixed when the Tenant informed the Landlord of the problem.
- Bike Stall: The Landlord does not own a designated bike stall and this did not appear in the tenancy agreement. There is a building waiting list for this, "allocated to the occupants only and not the unit number." Otherwise, the Tenant is expecting payment for a personal expense where the bike storage must be used for their own personal items.
- Storage locker: Not included with the tenancy agreement.
- Painting: The rental unit did not require repainting; however, the Tenant repainted it to their personal choice of colour on the day after signing the tenancy agreement. When the Tenant requested \$2,429.59, they did not mention painting at all.
- Bathroom mould: The Tenant did not communicate this issue to the Landlord. The Landlord provided that the handyman can investigate.
- Bathroom towel rack: The Landlord did not have the chance to repair the towel rack. The Landlord pointed to the pictures they provided in their evidence to show the Tenant renovated the bathroom, installed new towel racks on another wall and installing a new mirror on the wall.

In summary, the Landlord submitted that the Tenant had viewed the rental unit a couple of times before moving in. There was a move-in inspection completed with deficiencies noted and the Landlord did not have the chance to rectify the issues before the Tenant started their own renovations and repairs without authorization. Additionally, the Tenant has not communicated with the Landlord since approximately August 2020, and the Landlord has not had the chance to fix the problems.

The Landlord provided the Tenant's spreadsheet detailing their request for \$2,429. In response to this, the Landlord provided their spreadsheet showing their calculation of \$1,625.69, the finer points of which are outlined above, in addition to \$137.85 for bathroom lighting, and \$114.24 for the locksmith.

In the hearing, the Tenant responded to the Landlord's query of the higher claimed amount by stating they had guidance in preparation for this hearing. Specifically, that was to claim all amounts for all purchases associated with this tenancy, then work it out through the hearing process. The Tenant responded to say they maintain their claim for 3 electrical receipts, as well as 1 plumbing receipt, and "maybe do something with a couple of months of rent"; further, the Tenant claimed a single month rent free for the amount of time they spent fixing things.

The Landlord also pressed the Tenant further on their request for range hood repair, and the discussion in the hearing centred on the issue being that of the duct. The nature of that difficulty, as stated by the Landlord in the hearing, lies with the building strata.

### Analysis

To begin, I note the Tenant submitted a large amount of evidence. They provided email messages separate as individual files, and no guidance on important messages or reference to single pieces of communication. I combined these separate files into a single document, and this came to 824 pages. The Tenant also did not provide a guide to the photos they provided, and uploaded a bulk amount of receipts that they did not index or explain.

More importantly, the Tenant did not calculate items for their total claimed amount of \$15,027.32. It was the Landlord who provided an earlier spreadsheet prepared by the Tenant (for \$2,429.59) that explained their rationale for claimed amounts; I note the Tenant did not provide this document or refer to it, nor did they provide a similar type of

calculation in their evidence for this hearing. I give no consideration to the amounts involved therein for that reason, and the amount of \$2,429.59 receives no consideration from me as an alternative amount for compensation.

The Residential Tenancy Branch has in place the *Residential Tenancy Branch Rules of Procedure*. Rule 3.7 sets out: “To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.” I find the Tenant’s emails they provided were not clearly presented, with no reference to key communication. It is a significant burden on the Landlord, and me, to try to piece the Tenant’s claim together for them. This decreases the Tenant’s veracity on their claim that the Landlord was not responding to their claims for repair, or not willing to reimburse them for individual pieces.

Rule 6.6 provides that “The onus to prove their case is on the person making the claim.” I find the Tenant did not clearly present communication they had with the Landlord on these issues. Additionally, in the hearing the Tenant was at pains to make their points individually and frequently interrupted the Landlord when I specified it was the Landlord’s chance to respond to the Tenant’s submissions.

Additionally, in the hearing the Tenant seemingly amended their claim to ask for reimbursement on rent, and their thought was to “forget the dollars and cents”. I find this is vague and not helpful. The Tenant did not specify an amount in terms of a suitable reduction in rent. The Tenant provided a document that had a single statement: “hours – compensation – 64 hours”. There was no calculation of this amount. Additionally, the Tenant did not present justification for a reduction in rent in terms of a devaluation in the tenancy such as an impact on their usage or normal living in the rental unit. The Tenant was vague on the impact on their personal time and other expenses to them and for this reason, I dismiss their Application for a rent reduction in its entirety, without leave to reapply. This means the Tenant may *not* re-apply on this individual issue, and any other claim they make against the rent will likely be treated as *res judicata* (*i.e.*, this decision is conclusive and binding, and constitutes a bar to a subsequent application involving the same claim).

In contrast to the Tenant’s evidence, the Landlord provided a 10-page document as their response in this Application. This is titled “Major Issue Discussion” and therein the Landlord referred to individual pieces of evidence that were clearly labelled as such. The Landlord provided a succinct conclusion, as well as a spreadsheet showing what they believe is fair compensation to the Tenant for the issue of repairs to the rental unit.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish all of the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Landlord's obligation to provide and maintain a residential property in a suitable state of repair is set out in s. 32 of the *Act*. This is a state of decoration and repair that "complies with the health, safety and housing standards required by law", and suitability for occupation by a tenant.

Given my finding on the Tenant's evidence set out above, I find that they have not provided sufficient evidence to show they made requests to the Landlord for repairs, and then allowed the Landlord ample time to complete the repairs they requested. Because of this, I find there was no breach of the duty for basic repairs in the rental unit: either the Landlord was not fully aware of issues raised, or they were aware yet did not have time to complete.

Further, the Tenant has not established the value of the damage or loss. They provided a single document that listed the amount of \$15,027.32 and identified this as "out of pocket" expenses. There is no calculation of this amount in the Tenant's evidence. The Landlord pointed out that the Tenant provided a number of receipts that were for personal items, and I accept the Landlord's clear response to this that listed individual items thereof. The Tenant in their Application labelled receipts as "Too many to list." Further, I find the Tenant requested the cleaner to create a falsified receipt, and the invoice dated March 20, 2020 from the electrician states, "Billed to Landlord" and Invoice to "[The Tenant] For Landlord". These are misrepresentations amounting to fraud. Given the Tenant did not calculate their claimed amount, and included receipts

for personal items in their evidence, as well as false records, I side with the Landlord in finding that the Tenant is disingenuous in bringing this claim as they did.

Most important to the Tenant's claim for compensation is the positive duty set upon them by s. 7 of the *Act*, where they "must do whatever is reasonable to minimize the damage or loss." The Tenant did not present that they exercised their rights under the tenancy agreement by bringing matters to dispute resolution. At one point, the Tenant withheld rent for a brief period in an attempt to force the Landlord to make repairs. Further, in describing the electrical work, the Tenant noted that issues as identified by the electrician were increasing; however, there was no attempt to seek clarification or approval from the Landlord. Instead, the Tenant forged ahead with work, even replacing all of the communication lines within the unit, apparently treating the Landlord's property as if it were their own.

I find the Tenant failed to prove the Landlord's liability, to prove the value of the damage or loss to them, and to prove that they worked to minimize the monetary loss. Given these shortcomings, I grant no award for compensation to the Tenant. I am bound by s. 7 of the *Act* in this determination, and on the basis of the four-part framework set out above, I find the Tenant has not met the burden of proving their claim. The Landlord previously made an offer to the Tenant and though the Landlord clearly explained their rationale for that amount, I do not make that award by default in light of my evaluation of the Tenant's claim. The Landlord has discretion on whether they wish to leave that offer open.

I refer to the tenancy agreement, in particular the two clauses reproduced above. I find the Tenant violated the agreement by making changes without the approval of the Landlord. The Tenant in the future shall require written authority from the Landlord to make repairs, changes, or alterations to the rental unit. The Tenant must allow the Landlord a reasonable amount of time to complete repairs. Their avenue of recourse should repairs not be completed in a timely manner is dispute resolution. I advise the Tenant to not pay for repairs on their own and expect reimbursement in the future.

Regarding the Tenant's request for ongoing repairs, I find there was no succinct evidence from the Tenant showing that they notified the range hood issue to the Landlord previously. Similar with the issue of bathroom mould, I accept the Landlord's submission that this issue was new to them. With my finding on the Tenant's presentation of evidence set out above, I find the Tenant did not meet the burden of proving that they made a request about these items previously to the Landlord in writing. The parties discussed these matters briefly in the hearing and the Landlord

addressed each in their written submission. In the hearing the Landlord pledged their commitment to resolving the issue with the Tenant and this involves the strata. I dismiss this piece of the Tenant's claim, without leave to reapply.

In summary, I dismiss each of the Tenant's claims for compensation, a reduced amount of rent, and for repairs, all without leave to reapply. Because they were not successful in this Application, I dismiss their claim for reimbursement of the Application filing fee.

### 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 s. 9.1(1) of the *Act*.

Dated: June 30, 2022

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Residential Tenancy Branch