



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, LAT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order of authorization to change the lock, pursuant to sections 31 and 70; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant SH and landlord KM attended the hearing. Witness for the tenant DB also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue – Partial Settlement

At the hearing both parties agreed to the following binding settlement for the claim for an to change the rental unit's lock:

1. The landlord will change the rental unit's front door lock by July 31, 2022. The landlord will provide the new keys to the two tenants and retain a copy of the key.

The application for an order for monetary compensation, pursuant to section 67, will be adjudicated.

### Issues to be Decided

Is the tenant entitled to:

- a monetary order for loss?
- an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application. The tenant submitted 90 documents into evidence.

Both parties agreed the ongoing tenancy started on January 01, 2022. Monthly rent is \$1,750.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$875.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates the only tenant is SH.

The landlord was aware that the tenant planned to rent the second bedroom before she signed the tenancy agreement. The tenant rented the second bedroom on January 08, 2022. The tenant collects rent from DB in the monthly amount of \$875.00 and pays \$1,750.00 monthly to the landlord.

The tenant affirmed the unfurnished rental unit is a 2 bedroom plus den apartment. The landlord stated the rental unit is a 3 bedroom apartment with approximately 1,200 square feet built around 1992.

Both parties agreed they learned on January 02, 2022 that the master bedroom had a water leak. The landlord hired contractors to inspect the water leak and on January 11, 2022 the ceiling of the master bedroom was removed. On January 21, 2022 the ceiling was reinstalled and the drywall was only repaired on April 01, 2022.

The tenant testified he could only move to the master bedroom on February 09, 2022 and that the landlord did not complete the repairs until April 01, 2022. The landlord said the tenant was not able to occupy the master bedroom from January 11 to 21, 2022 and during one weekend in March 2022.

Both parties agreed the tenant paid 50% of rent in February 2022 (\$875.00) because of the repairs and the full amount in the other months. The tenant received \$875.00 from DB every month.

The tenant lived at his parents' house from January 02 to February 09, 2022 and commuted 140 kilometers per day. The tenant affirmed he could not move to the den because it is too small, and it is occupied with his furniture. The landlord stated the den is a third bedroom, it has a window and a door and she used it as a bedroom when she occupied the rental unit. The tenant submitted into evidence a photograph of the den with his furniture, including a mattress.

The landlord asked the tenant not to rent the second bedroom and occupy it when she learned about the leak. The tenant testified the landlord learned that he rented the second bedroom on January 11, 2022. The tenant imagined the leak was minor and it would be repaired in a few days.

The landlord texted the tenant on February 26, 2022:

The condo is 100% liveable. If that doesn't work for you, then I've already said I will agree to mutually end the lease, as you asked in January. I rented you a 3 bedroom 2 bathroom condo. You chose to rent out one of the spare rooms after knowing about the leak. This still puzzles me by the way.

The tenant is claiming compensation in the amount of \$1,474.25 for gasoline expenses, as he commuted 140 kilometers per day from January 03 to February 25, 2022. The landlord said there are no receipts for gasoline, the tenant did not need to commute as he could have not rented the second bedroom or he could have used the third bedroom. The landlord affirmed there is a huge closet across from the third bedroom that the tenant could have used to store his belongings that were in the third bedroom. The master bedroom could be used since January 21, 2022 and the tenant could have contacted the insurance company for a hotel if he needed to move out.

The tenant is claiming a retroactive rent reduction in the amount of \$875.00 because of the repairs in the months of January and March 2022. During the hearing the tenant stated he is seeking a rent reduction in the amount of \$1,750.00.

The tenant is claiming “in trust compensation for DB (roommate) due to the impact of construction - \$100.00 / month x 3 months =\$300.00”.

The tenant is claiming compensation in the amount of \$200.00, as the contractors entered the rental unit twice without giving notice. The landlord testified the contractors entered DB’s bedroom twice without giving notice accidentally. The landlord said she tried her best not to disrupt the tenant and DB.

DB affirmed that on one occasion one contractor entered his bedroom when he was sleeping and that on a few occasions the contractors were in the living room and he woke up because of the noise. DB works night shifts and he sleeps during the day. DB communicated with the landlord, the tenant and the contractors about the repairs.

The tenant is claiming compensation in the amount of \$50.00 because the electricity bill was higher from January 01 to April 01, 2022. The landlord agreed to pay this amount.

The tenant is claiming compensation in the amount of \$50.00 because the fireplace did not function for 10 days. The landlord stated the fireplace was repaired 5 or 6 days after the tenancy started.

The tenant submitted a written submission indicating the total amount of his claim is \$2,949.25.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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

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

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

#### Definition of Occupant

RTB Policy Guideline 19 states:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

Based on the undisputed testimony, I find that the DB is an occupant and DB does not have rights or responsibilities under the Act with the landlord. DB may seek compensation against tenant SH for any damages he incurred. I note the RTB does not have jurisdiction over roommate disputes.

#### Gasoline expenses

Based on the landlord's more convincing testimony, the February 26, 2022 message, and the photograph, I find the space referred to by the tenant as a den is a bedroom and the tenant could have occupied this space during the repairs of the master bedroom. I find the tenant could have minimized his losses by occupying the third

bedroom. I find the tenant failed to prove, on a balance of probabilities, that he had to commute 140 kilometres per day.

Thus, I dismiss the tenant's claim without leave to reapply.

### Rent reduction

Section 65(1) of the Act states:

(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], **if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement**, the director may make any of the following orders:

[...]

(b) **that a tenant must deduct an amount from rent to be expended on** maintenance or a repair, or on a service or facility, as ordered by the director;

[...]

(f) **that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;**

(emphasis added)

Residential Tenancy Branch Policy Guideline 22 states an arbitrator may order that past or future rent be reduced :

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

The tenant claims he suffered a reduction in his tenancy in the amount of \$875.00 for the repairs period, which is from January 01 to April 01, 2022. During the hearing the tenant affirmed he is seeking a reduction in the amount of \$1,750.00.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides

In circumstances that can reasonably be anticipated, **such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made**, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."

(emphasis added)

In this matter, the tenant's submission indicates the claim for rent reduction is in the amount of \$875.00. Thus, I'm considering the claim for rent reduction in the amount of \$875.00.

I accept the uncontested testimony that the landlord authorized the tenant to pay 50% of rent in February because of the repairs. The tenant claims he suffered a rent reduction of 25% of the total amount of rent for the months of January and March 2022.

The agreement between the tenant and DB is not relevant, as the only tenant in the tenancy agreement is the applicant.

Section 32(1) of the Act states:

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.

Residential Tenancy Branch Policy Guideline 01 states:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

The parties did not provide an explanation for the rent reduction of 50% for February 2022. As stated above, I found that the tenant could have occupied the third bedroom during the repairs.

Based on the testimony offered by both parties and the photograph, I find that, because of the landlord's breach of section 32 of the Act, the tenant suffered a loss in the tenancy resulting in 10% of the amount of the rent due for the months of January and March 2022.

In accordance with section 65(1)(f) of the Act, I authorize a one-time retroactive monetary award in the tenant's favour in the amount of \$350.00 to compensate the tenant for the reduction in the value of the tenancy agreement for January and March 2022.

Impact of construction

The tenant claimed compensation for a loss supposedly suffered by DB.

As stated above, DB is an occupant and DB does not have rights or responsibilities under the Act with the landlord. DB is not an applicant and may seek compensation against tenant SH for any damages he incurred.

I dismiss the tenant's claim without leave to reapply.

Notice to enter

Section 29(1) of the Act states:

- A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
  - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
    - (i) the purpose for entering, which must be reasonable;
    - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Based on testimony offered by both parties, I find the landlord breached section 29(1) of the Act by allowing the contractors to enter the rental unit twice without giving notice to the tenant.

Residential Tenancy Branch Policy Guideline 6 states:

**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.

(emphasis added)

Based on the undisputed testimony, I find the tenant failed to prove, on a balance of probabilities, that he suffered a loss because of the landlord's breach of section 29 of the Act. I find the tenant suffered a temporary discomfort because of the landlord's breach of the Act and this was not a substantial interference with the ordinary and lawful enjoyment of the premises.

As stated above, DB is an occupant and DB does not have rights or responsibilities under the Act with the landlord. DB is not an applicant and may seek compensation against tenant SH for any damages he incurred.

Thus, I dismiss the tenant's application for compensation for loss of privacy.

#### Electricity bill

I accepted the tenant's uncontested testimony that the electricity bill was \$50.00 higher because of the repairs.

Thus, I award the tenant compensation in the amount of \$50.00.

#### Fireplace

The tenant claims the landlord repaired the fireplace in 10 days and the landlord claims she repaired the fireplace 5 or 6 days after the tenancy started. Based on the tenant's more convincing testimony, I find the landlord repaired the fireplace in 10 days.

I find the landlord provided a reasonable response, acted quickly to repair the fireplace and a non-functional fireplace for 10 days does not reduce the value of a tenancy. The tenant did not indicate that he did not have another source of heat. I find the tenant did not suffer a loss.

I dismiss the tenant's claim without leave to reapply.

#### Filing fee and summary

As the tenant was partially successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee.

In summary, the tenant is entitled to:

<b>Expenses</b>	<b>\$</b>
Rent reduction	350.00
Electricity	50.00
Filing fee	100.00

<b>Total</b>	<b>500.00</b>
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As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a tenant may be deducted from any rent due

#### Conclusion

Per sections 65, 67 and 72 of the Act, the tenant is authorized to deduct \$500.00 from the next rent payment.

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: July 19, 2022

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Residential Tenancy Branch