



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      FFT, MNDCT, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This matter was convened as a result of the tenant being successful in her Review Consideration Application whereby the original decision was set aside so that the matter could be heard on this date. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an

opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to Decide

Is the tenant entitled to a monetary award for losses arising out of this tenancy?

Is the tenant entitled to an order to compel the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

### Background, Evidence

The tenant's testimony is as follows. The tenant has lived in this apartment building for several years but was unhappy in the previous suite she lived in as a chain smoker resided there before her. In October 2021 the housing society offered the tenant the subject unit for occupation for January 1, 2022. The tenant continues to reside in this unit. The tenant testified that she was given only ten minutes to make a decision on whether to take the suite or not. The tenant testified that when she got the unit it was disgusting and dirty and not sanitized as the previous tenant lived in it for 28 years. The tenant testified that the Director advised her that the unit would not be getting new paint or carpets and that if the tenant did that, she would bear the cost. The tenant testified that she did not ask permission to do the work but had new carpets installed and the suite painted at a total cost of \$4295.00. The tenant is seeking that amount along with the \$100.00 filing fee.

The agent for the landlord gave the following testimony. The agent testified that the unit was in excellent condition and that despite the prior long-term tenancy, the unit was very well maintained and very clean when it was given to the tenant. The agent testified that the tenant had over two months to notify the landlord if she didn't want it. The agent testified that the housing society tried to do a kind thing and offer her a different unit in the building. The agent testified that she was not informed of the work done by the tenant until she received the package for this hearing and her claim for the costs. The agent testified that the tenant should not be entitled to any money.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant's application is dismissed without leave to reapply for the following reasons. The tenant was advised by the Director of the housing society that the unit would not be getting any upgrades or renovation work done. The Director advised the tenant if she wanted to make any changes to the suite, the tenant would bear the cost. The tenant did not ask permission to conduct any of the work and did so without authorization.

I find that the tenant conducted these repairs without the consent or authorization of the property manager or Director and therefore she must bear those costs. She is not entitled to any compensation.

The tenant has not provided sufficient evidence to show that an order should be issued to compel the landlord to comply with the *Act*, regulation or tenancy agreement, accordingly; that portion of her application is also dismissed without leave to reapply.

### 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 29, 2022

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Residential Tenancy Branch