



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RR, RP, PSF, LAT, OLC

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on July 26, 2022 seeking:

- a. compensation for monetary loss or other money owed
- b. a reduction in rent for repairs, services or facilities agreed upon but not provided
- c. repairs made to the rental unit, after contacting the Landlord with no completion
- d. provision of services or facilities required by the tenancy agreement or law
- e. authorization to change the locks in the rental unit
- f. the Landlord’s compliance with the legislation and/or the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 9, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

### Preliminary Matter – Tenant service of evidence to the Landlord

The *Residential Tenancy Branch Rules of Procedure* govern this hearing process. As stated in their objective, this is “to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.”

Rule 2.5 specifies that an Applicant must submit copies of documents and digital evidence with the application for dispute resolution.

Following this, Rule 3.1 specifies that an applicant must serve the respondent with a copy of the Notice of Dispute Resolution Proceeding document, and “any other evidence submitted to the Residential Tenancy Branch directly. . .” Rule 3.5 specifies that an applicant must demonstrate in the hearing that they served the respondent with the Notice and all evidence.

Rule 3.14 specifies that evidence not served to the other party with the Notice must be received by a respondent not less than 14 days before the hearing. If this is considered “new and relevant evidence” not available to an applicant at the time they applied, an arbitrator has discretion to accept the late evidence, “provided that acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.”

The Landlord here, as the Respondent, stated they did not receive evidence from the Tenant. The Tenant did not provide proof of service of this material, and after questioning they stated this was material that was within the Landlord’s knowledge because it consisted of text messages and other pictures the Tenant shared with the Landlord during the tenancy, prior to this Application.

This does not guarantee the Landlord has access to this material and is able to answer to it. I find the Landlord is prejudiced by not having a copy of the evidence for this hearing. It is unfair to rely on this material if the Landlord did not receive it, or otherwise never had it, and the Tenant cannot prove all this material was one time received by the Landlord.

For this reason, I exclude the Tenant’s evidence from consideration, as per Rule 3.17. It would be prejudicial to the Landlord to include this material without affording the Landlord the opportunity to review it or provide counter evidence.

#### Issue(s) to be Decided

- a. Is the Tenant entitled to compensation for monetary loss or other money owed?
- b. Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided
- c. Is the Landlord obligated to make repairs to the rental unit, after contact from the Tenant?
- d. Is the Landlord obligated to provide services or facilities required by the tenancy agreement or law?
- e. Is the Tenant authorized to change the locks in the rental unit?
- f. Is the Landlord obligated to comply with the legislation and/or tenancy agreement?

### Background and Evidence

The Tenant and Landlord both spoke to the basic terms of the tenancy agreement in this tenancy that started on July 1, 2022. The rent amount is \$2,000 per month, payable on the 1<sup>st</sup> of each month. The Tenant paid a security deposit of \$1,000. This is the basic information the Tenant provided on their Application.

The Tenant listed problematic elements of the items listed as included in the rent:

- no parking
- dishwasher not working
- laundry not working
- no heat

Aside from this, the Tenant cited problems with ventilation that is causing illness in family members. Additionally, they described problems with pests.

According to the Tenant, they entered the rental unit approximately two weeks before the start of this tenancy, paying that first month's rent (*i.e.*, July 2022) rent in advance. The Landlord stated they would have the rental unit ready for July 1.

After their move in on July 1, the Tenant repeatedly asked about the availability of parking. By mid-July, the Tenant stated they would not pay rent because of ongoing problems that were not being resolved. By July 26 the Tenant filed an Application for this hearing. The Tenant described the problems they had with the Landlord's communication to them.

The Landlord presented that they asked for the Tenant's receipts from the laundromat where they were having to complete their washing. Additionally, the Landlord had a plumber visit to the rental unit, but the Tenant did not allow entry because of public health restrictions in place at the time.

The Tenant's basic point in their Application is that no repairs or any resolution of the issues occurred in July. They pledged from that point on to stop paying rent. In the hearing, the Tenant confirmed they have not paid rent from August 1<sup>st</sup> onwards.

The Landlord verified that the Tenant has not paid rent for each of the months from August 2022 onwards. The Landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent and that will be the subject of an upcoming hearing in January 2023.

In the hearing, I focused the discussion on the immediate issue of heat in the rental unit. The Tenant stated they had difficulty with the control mechanism of the heating within the rental unit, which they stated to be broken. The Landlord promised to visit the rental unit immediately in order to rectify the problem with heat. The Landlord re-stated their difficulty with the Tenant residing in the rental unit for months ongoing without paying rent.

### Analysis

The applicable sections of the *Act* in this scenario are as follows:

s. 32:

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.

s. 62

- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

s. 65

- (1) . . . 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:

- (d) that any money owing by a tenant or a landlord to the other must be paid;
- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement

s.67:

. . .if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this matter the onus is on the Tenant to show both the fact of lack of repair and maintenance by the Landlord, and the Landlord's failure to provide services under the tenancy agreement. The Tenant must also show the communication they had with the Landlord, to show that their requests for repair or other maintenance were not acted on.

Above, I excluded all of the Tenant's evidence from consideration. There is thus no photos, video or documented evidence of the state of the rental unit, nor the Tenant's communication with the Landlord about the issues in place. With no evidence, I dismiss these parts of the Tenant's claim, items c. through f. listed above in the Introduction.

To assess the monetary component of the Tenant's Application, 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 the applicant has the burden to provide sufficient evidence to establish 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.

With the Tenant's evidence excluded from consideration, I find there is neither proof that a damage or loss to them exists, and without documentation of their communication with the Landlord, I find there is no proof that any damage or loss resulted from the Landlord's violation of the *Act* or the tenancy agreement.

With no evidence in the record for consideration, I dismiss the monetary components of the Tenant's claim, items a. and b. listed in the Introduction.

In sum, I dismiss the Tenant's Application in its entirety, with leave to reapply. I made the Tenant aware of the ramifications of the non-payment of rent which was their decision made unilaterally from August onwards. I also advised the Tenant to seek help in the form of tenant advocacy groups in the province – this should aid in both the tenancy issues as well as preparation for a hearing at the Residential Tenancy Branch. I strongly urge the Tenant to review all instructions and guidelines for their next upcoming hearing in January.

In the hearing, the Landlord agreed to assist the Tenant with the immediate need for heat control in the rental unit. This is a basic measure in line with s. 32 of the *Act*. This single gesture by no means resolves the other issues in place in this tenancy.

### Conclusion

For the reasons outlined above, I dismiss the Tenant's Application in its entirety, with 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: December 12, 2022

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Residential Tenancy Branch