



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC; RP; RR; O

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord make repairs to the fence at the rental unit; and a reduction in rent for repairs, services or facilities agreed upon but not provided.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenant served the Landlord with the Notice of Hearing documents by handing the documents to the Landlord at the rental property on July 13, 2012. It was also established that the Tenant hand delivered copies of her documentary evidence to the Landlord on July 14, 2012.

### **Issues to be Decided**

- Is the Tenant entitled to compensation for damage or loss pursuant to the provisions of Section 67 of the Act?
- Should the Landlord be ordered to make repairs to the fence of the common property pursuant to the provisions of Section 32 of the Act?
- Is the Tenant entitled to a rent reduction pursuant to the provisions of Section 65(1)(f) of the Act?

### **Background and Evidence**

The rental unit is a basement suite. The Landlord lives in the top floor of the rental property. This tenancy started on June 1, 2012.

There is no written tenancy agreement. Rent is \$600.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$300.00 on June 1, 2012.

The Tenant gave the following testimony:

The Tenant testified that rent included utilities, cable and the use of laundry facilities once per week. She stated that cable was not provided and that she has not been provided access to the laundry facilities. The Tenant seeks a monetary award, calculated as follows:

Cost to install cable in the rental unit:	\$70.00
Cost to do laundry for one month (estimated at \$15.00 per week)	<u>\$60.00</u>
Total monetary award sought	\$130.00

The Tenant also seeks a rent reduction in the amount of \$130.00 to compensate her for services or facilities agreed upon but not provided. The Tenant provided a copy of a receipt in evidence, which indicates receipt of \$600.00 for rent, "incl utls cable + wash (once week)". The Tenant also provided a written statement from a "housing worker" that states, "This is to verify hearing [the Landlord] explain to [the Tenant] that there would be Cablevision in her suite upon moving in."

The Tenant testified that the fence at the rental property has missing boards and that she is afraid that her small dog will escape onto the street. She stated that the Landlord refuses to fix the broken boards, or to keep the gate securely closed.

The Landlord gave the following testimony:

The Landlord testified that the rent ad indicated that rent was \$650.00 and that utilities were not mentioned as included. She did not provide a copy of the ad. The Landlord stated that she talked to the Tenant's housing worker when the Tenant brought him to the rental property to view the rental unit. The Landlord stated that she agreed that the Tenant would have basic cable only and that the Tenant filled in the receipt and the Landlord signed it. She stated that the words "incl utls cable + wash (once week)" were added by the Tenant after the Landlord signed the receipt. The Landlord stated that she had a copy of the receipt that she signed. Later on in the Hearing she stated that she could not find her copy.

The Landlord stated that the Tenant phoned the cable provider, who told the Tenant that the cable company would not authorize the Tenant to share the Landlord's basic cable, and that the Tenant would have to install her own cable, so the Tenant arranged for her own. The Landlord stated that the amount the Tenant is asking for exceeds the amount charged for basic cable.

The Landlord testified that the fenced yard is common property, shared between the Landlord and the Tenant and that the Tenant's dog should be enclosed when in the yard. The Landlord stated that she does not wish to keep the gate closed.

### **Analysis**

The Tenant has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

Section 67 of the Act states:

#### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant did not provide sufficient evidence to support her claims for compensation or a rent reduction regarding the cable or laundry facilities, for the following reasons:

1. Contrary to parts 1 and 3 of the damage test, the Tenant did not provide proof of the actual amount required to compensate her for lack of cable, or that she had paid to have the cable installed. This proof was readily available to her in the form of a receipt or invoice from the cable company.
2. The Landlord disputed that the use of the laundry facilities was included in rent. The Tenant provided a receipt in evidence which the Landlord also disputed. The letter provided by the housing worker mentioned nothing about the use of laundry facilities being included in rent. The Tenant provided no documentary

evidence of her cost to do laundry once a week. Therefore, I find that the Tenant has failed to prove parts 1, 2, or 3 of the damage test.

With respect to the Tenant's application for an Order that the Landlord repair the fence and place a working lock on the gate, Section 32(1) 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.

The Tenant stated that there was a small opening in the bottom of the fence and she was afraid her dog would escape onto the street. The Tenant did not provide any evidence that the unlocked gate or the fence itself posed a health or safety concern. There was no evidence that the absence of a locked gate provided a security risk to the Tenant or her belongings. The Tenant did not provide evidence that the missing boards were particularly unsightly. Therefore, I decline to order the Landlord to repair the boards or place a secure lock on the gate.

The Tenant has not been successful in her application and I find that she is not entitled to recover the cost of the filing fee from the Landlord.

It is important to note that the parties gave conflicting evidence with respect to a receipt that was prepared by the Tenant and signed by the Landlord. Section 26(2) of the Act requires a landlord to provide a tenant with a receipt for rent paid in cash. I hereby order that any rent receipts that may be issued in the future be prepared and issued by the Landlord, not the Tenant.

Section 13 of the Act requires a landlord to prepare in writing every tenancy agreement entered into on or after January 1, 2004, which the Landlord did not do. I hereby order the Landlord to comply with Section 13 of the Act and provide the Tenant a copy of the tenancy agreement in writing (as the Landlord understands it to be).

At the time that the Tenant filed her Application for Dispute Resolution, the tenancy was not even 6 weeks old. The parties were advised during the Hearing to treat each other with respect. They would also be wise to put in writing any future agreements they might make.

**Conclusion**

The Tenant's application is **dismissed**.

The Landlord is hereby ordered to comply with Section 13 of the Act and provide the Tenant a copy of the tenancy agreement, as the Landlord understands it, in writing.

I hereby order that any rent receipts that may be issued in the future be prepared and issued by the Landlord, not the Tenant.

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: August 09, 2012.

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Residential Tenancy Branch