



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

The Parties were affirmed and given the opportunity to give testimony.

The original hearing for the Tenant’s application was conducted on March 12, 2015 and a decision was issued on March 13, 2015 dismissing the Tenant’s application due to late filing of the application.

The Tenant then applied for a review consideration on the grounds that he had paid for his application on August 14, 2014 and the tenancy ended August 15, 2012 therefore he was not late in making his application as the application was within the 2 years allowed. The Tenant’s review application was successful and the Review Hearing was held on May 20, 2015.

### Issues(s) to be Decided

1. Has the Tenant had a loss or damage under the Act, regulations or tenancy agreement and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?
3. What other considerations are there?

## Background and Evidence

This tenancy started on November 1, 2008 as one year a fixed term tenancy and then was reviewed twice as fixed term tenancies and then the tenancy continue on a month to month basis starting in November, 2011. Rent was \$1,635.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$800.00 in advance of the tenancy. Condition inspection reports were complete at the start and end of the tenancy. The tenancy ended on August 15, 2012.

The Tenant said the Landlord neglected his duties as a Landlord and as a result the Tenant has applied for \$6,867.00 of compensation for loss of quiet enjoyment of the rental unit. The Tenant said the Landlord was negligent in the following ways:

1. The Tenant said the Landlord did not provide 24 hour written Notices when the Landlord entered the rental unit. The Tenant said this disturbed himself and his family. The Tenant continued to say the Landlord entered often and with little or no notice. The Tenant continued to say that he did request the Landlord to come to the unit by emails to make repairs but he thought the Landlord still has to give written notice to enter. The Tenant submitted a number of emails in his evidence package requesting repairs.
2. The Tenant said the Landlord did not repair things in the unit in a timely manner or in some cases the repairs were not made at all. The Tenant said the closet door in the bedroom broke off its hinges and the Landlord never repaired it. As well the Tenant said the Landlord did not repair the toilet for discoloured water, the tub, the lock on the kitchen window and other things in a timely manner. The Tenant said this shows the Landlord was negligent.
3. Further the Tenant said the Landlord did not respond to a rodent problem in a responsible manner. The Tenant said there were two rodent incidents. The first incident was in January 2010. There were rats in the storage and garbage area of the rental complex. The Tenant said the storage and garbage areas are together in a fenced off area. The Tenant said the Landlord cleaned the area and sprayed something to help remove the rats from the area. As well the Tenant said he handled his garbage differently. The Tenant said he hauled some of his garbage to other garbage disposal places. The Tenant said the rodent problem was corrected after approximately 2 months.
4. The Tenant said the second rodent problem started in January of 2012 and this time the rats were in the rental unit. The Tenant said this rodent problem was not corrected and they moved out of the rental unit on August 15, 2012. The Tenant said the rodent problem was difficult to live with and there were potential health issues for his family. As well the Tenant said in the Landlord's evidence there is a letter from the person the Landlord hired to help with the rodent problem indicated the rental complex had an inherent rodent problem due to the location of the garbage. The Tenant said given that the rodent problem was inherent to the rental units the Landlord should have hired a professional exterminator to deal with the rat problem. The

Tenant said the Landlord did not hire an exterminator to deal with the rats and so the Landlord was negligent in his duties as a Landlord.

The Tenant continued to say that because of the issues with the rental unit and the Landlords lack of response to correct the issues the Tenant is requesting compensation for his loss of quiet enjoyment of the rental unit.

The Tenant said he has calculated his claim as 5% of the rent for 45 months which equals  $\$81.75 \times 45 = \$4,414.50$  for the loss of service and lack of repairs. As well the Tenant said he is claiming  $\frac{1}{2}$  a month's rent  $\$817.50$  for 3 months for the rodent problems in the rental unit in the amount of  $\$2,452.50$ . The Tenant said the total claim is for  $\$6,867.00$ .

The Landlords said they thought the tenancy was amicable and they do not agree with the Tenant's claims. The Landlord said they would respond to the claims in the same order as the Tenant made the claims.

1. The Landlords said they only went to the rental unit when the Tenant requested them to repairs something or to respond to a request from the Tenant. The Landlords said they did not give written notice when they came to the unit but many times the Landlord said they made arrangements by phone with the Tenant's wife. To support this the Landlords submitted a copy of their telephone records and highlighted the calls to the Tenant and his wife. The Landlord said they only came to the rental unit by request of the Tenant to make repairs or respond to a request from the Tenants.
2. The Landlord said they repaired all the items the Tenant requested them to do except they did not repair the closet door until after the Tenant moved out. The Landlord said they tried their best to be responsive to the Tenant's requests.
3. The Landlord said that as soon as they were told about the first rodent issue they came to the unit and advised the strata about the problem. The Landlord said that pest control is part of the maintenance fee the strata collects. The Landlord said he cleaned the garbage area and requested the Tenant to clean his storage area and then he sprayed a pesticide to discourage the rats from that area. The Landlord said this rat problem was resolved as the Tenant said in about 2 months.
4. The Landlord said the second rodent issue was a result of the neighbouring rental unit keeping garbage outside the house and the rats gained enter into that unit and then the Tenant's rental unit. The Landlord said he contacted the strata as they were the one to deal with this issue. The Landlord continued to say the strata management was changing at this time and did not handle the problem well. The Landlords said they hired a manager from another strata that had experience with rodent issues to assist them. The Landlord submitted a letter from the other strata manager who indicated the rat problem as being inherent to the handling of garbage in the rental complex. The Landlord said the rodent problem was not resolved until the

Tenant moved out and the rental unit and the unit was cleaned and free of garbage. The Landlords said the rodent problem has not reoccurred with the new tenants that are in the rental unit. Further the Landlord said there were no rodent problems in the first two years of the tenancy.

The Landlords said in closing they tried to have a good tenancy and told the Strata and followed up with the Strata about the rodent problem but the issue was not resolved until the unit was cleaned and the garbage removed. As well the Female Landlord said the Tenant's wife gave her names of other tenant/friends if she wanted to call them for the rental unit. The Landlords said a Tenant would not do this if they thought the Landlord was neglectful. The Landlords said they tried to make things work, they only entered the unit when requested to and they advised the strata about the rodent problem as soon as they knew about it.

The Tenant said in closing the Landlords entered the unit without written Notice, there were no emergency repairs or other repairs done in a timely manner and the Landlord did not correct the rodent problem. The Tenant said the Landlord did not meet his duties as a Landlord and therefore the Tenant should be compensated.

### Analysis

**Section 29** (1) of the Act says 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;

The parties both agree the Landlord entered the rental unit without written notice but the Act makes provision for a Landlord to enter a rental unit with permission of the Tenant. Both parties made references to the emails that the Tenant sent to the Landlord requesting repairs at the rental unit. Neither party said the Landlord was denied access on these occasions when the Landlord came to the rental unit to make repairs; therefore on the balance of probability and as the Tenant had requested the repairs, I find the Tenant most likely gave permission to the Landlord to enter the unit to make repairs. Consequently I find the Landlord has complied with the Act, regulations and the tenancy agreement.

**Section 32** (1) of the Act says 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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The repair issues that have been brought up, namely tub repairs, a lock on the window, discoloured water in the toilet and the closet door coming off its hinges are not emergency repairs and it is unclear whose responsibility the repairs were. If the damage to the unit was caused by the Tenant then the Tenant is responsible for the repairs and if the damage is normal wear and tear or a defective part in the rental unit then it is the Landlord's responsibility. As no evidence was submitted as to the cause of the repairs I find that neither the Tenant nor the Landlord have proven who is responsibility for the damage to the unit. The burden of proof is on the claimant and in this situation the Tenant has not proven the Landlord was negligent. As well the Landlord has a responsibility to make repairs and both parties agree the Landlord had repaired some of the things the Tenant asked the Landlord to repair. Consequently I dismiss the Tenant's claim that the Landlord was negligent about repairs in the rental unit.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

In this situation the Tenant is claiming compensation for loss of quiet enjoyment so no receipts or actual costs can be verified, but the Tenant must prove the Landlord is solely responsible in violation of the Act for the Tenant's loss. Both parties agree there were no rodent issues in the first 2 years of the tenancy and both parties agree that the rodent problem was based around the handling of garbage in the rental complex. The Landlord testified that the rodent problem started at the neighbours unit because garbage was left out and the Landlord said he advised the strata about the rodent problem. When the strata did not respond well to the problem the Landlord said he made efforts himself to control the rodents. Both parties agreed the Landlord's efforts did not solve the rodent problem. The Tenant did not know how the rodent problem started but he believed it was due to how the garbage was being handled. The Landlord was not responsible for how the Tenant and other tenants in the complex handled their garbage. As well given that the rodent problem did not occur in the first two years of the tenancy and has been resolved after this tenancy; I find the rodent problem was a result of how the tenants in the rental complex handled their garbage. I find the Landlord did not cause the rodent problem. Consequently I find the Tenant has not established grounds to prove the Landlord diminished the Tenant's tenancy with a loss of quiet enjoyment. I dismiss the Tenant's application without leave to reapply.

### Conclusion

The Tenant's application is dismissed 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: May 20, 2015

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Residential Tenancy Branch

