



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67.

The tenant, the tenant's interpreter and the landlord's three agents (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Preliminary Issue – Amendment of Tenant's Application

On May 9, 2016, the tenant filed an amendment to his original application to increase his monetary claim from \$3,000.00 to \$8,000.00. In the details box of the amendment the tenant wrote;

*"carpet, refrigerator and bathtub together with painting of all walls and doors require replacement after 30 years of neglect, window screens missing."*

The tenant clarified that he wished to amend the tenant's application to include an order for the landlord to make repairs to the unit, site or property and if the landlord was not ordered to make the requested repairs he seeks the additional \$5,000.00 in compensation to allow him to hire a professional to tend to the repairs.

I find that the landlord should reasonably have known that the tenant was seeking repair orders based on the text written in the details box of the amendment. In accordance with section 64(3) of the Act, I amend the tenant's application to include a request for repair orders.

#### Preliminary Issue – Adjournment Request

An hour after the hearing commenced, the tenant requested an adjournment. The tenant indicated that he wished to provide further evidence to disprove the landlord.

*Residential Tenancy Branch, Rules of Procedure*, rule 7.9 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- (a) the oral or written submissions of the parties;
- (b) the likelihood of the adjournment resulting in a resolution;
- (c) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment;
- (d) whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- (e) the possible prejudice to each party

I informed the tenant at the hearing that I would not adjourn the hearing. Although I considered all the criteria in 7.9, I declined to adjourn the hearing as the tenant had ample opportunity to file his evidence, and it would unfairly prejudice the landlord to reschedule the hearing.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order for the landlord to make repairs to the unit, site or property?

#### Background and Evidence

As per the testimony of the parties, the tenancy began on February 1, 2013 on a fixed term until June 30, 2013 at which time the tenancy was renewed and continued on a

month-to-month basis. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$300.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

### *Tenant*

The tenant claims the overhead garage gate malfunctioned and damaged his car on March 26, 2016. The tenant testified that because the damage occurred on private property his insurance provider does not cover such claims. Therefore the tenant seeks \$3,000.00 in compensation from the landlord to cover the cost of anticipated repairs to his vehicle. In an effort to support his claim, the tenant has provided estimates from two separate car repair businesses, a witness statement and photographs.

In relation to the tenant's request for a repair order the tenant listed deficiencies with the following; fridge, paint, carpet, bathtub and window screens. The tenant testified that since filing his application the fridge has been replaced, therefore he no longer seeks a repair order for the fridge. It is the tenant's position that upon the start of his tenancy the resident manager told the tenant that he would paint the rental unit and exchange the carpets. The tenant testified this has not been done to date. The tenant testified that his bathtub requires repainting as some paint has chipped away creating a rust spot. The tenant has observed other rental units with window screens and therefore requested window screens for his rental unit.

### *Landlord Reply*

The landlord disputes the overhead garage gate malfunctioned and damaged the tenant's vehicle. Upon report of the accident, the landlord had a technician from a company that services overhead gates inspect the gate. The landlord testified this technician found the gate undamaged and in functioning order. The landlord provided a copy of an invoice and a witness statement from the attending technician.

In response to the tenant's claim for a repair order, the landlord contends that the condition inspection report, dated February 5, 2013, and signed by the tenant shows the rental unit in good condition and not in need of repairs.

The landlord testified that the unit had paint touch ups conducted prior to the tenant's occupancy and the entire rental unit was painted prior to the previous tenant's occupancy. The landlord testified the tenancy prior to the tenants was not long. The landlord testified the carpets were shampooed prior to the tenant's occupancy and based on subsequent inspections the landlord estimates the carpets have not been

shampooed since. The landlord acknowledged the finishing is wearing on the tub; however not to the point the tub requires replacement. The landlord testified screens are not provided however the tenant is a liberty to install screens at his own expense.

### Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 32 of the *Act* establishes that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In the situation of vehicle damage, the question of compensation is based on the proof the landlord failed in their obligation to repair and maintain the overhead gate. I find the tenant has provided insufficient evidence to prove, on the balance of probabilities, the landlord breached the *Act* by neglecting to maintain the gate. The invoice and witness statement from the attending technician are consistent with the landlord's testimony that the gate was in proper functioning order. For this reason I dismiss the tenant's application for compensation in relation to vehicle damage.

In regards to the tenant's claim for repairs orders, I find the tenant has provided insufficient evidence to establish the landlord has failed to maintain the rental unit pursuant to section 32 of the *Act*. Based on the signed condition inspection report dated February 5, 2013, the rental unit was determined to be in "good" condition. The report did not indicate issues with the paint, carpet and bathtub.

As per the *Residential Tenancy Policy Guideline* the landlord is responsible for painting the interior of the rental unit at reasonable intervals. Based on the landlord's testimony and signed condition inspection report I find the rental unit had been painted not long before the tenant's occupancy and therefore does not require additional painting at this time.

Under the *Residential Tenancy Policy Guideline*, during a tenancy, the tenant is obligated to maintain the carpets by periodic shampooing. As per the condition inspection report, submitted photographs and testimony of the landlord, I find the carpets are soiled as a result of this tenancy. Contrary to the tenant's position that the landlord failed to maintain the carpets, I find the tenant has failed to maintain the carpets by regularly shampooing them.

I find the condition of the bathtub as described by the tenant does not constitute neglect by the landlord or the need for replacement. Lastly, window screens were not provided as part of the tenancy and the *Act* does not obligate the landlord to provide window screens.

I dismiss the tenant's application for repair orders. As I have made a finding dismissing the tenant's application for repair orders due to insufficient evidence to establish the landlord contravened the *Act*, the tenant is not entitled to his additional monetary claim of \$5,000.00.

### Conclusion

The tenant's entire 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: November 08, 2016

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Residential Tenancy Branch