



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRT, MNDCT, RP, LRE

### 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*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. In addition to acting as the landlord's legal counsel, the landlord's legal counsel also assisted with translating sworn testimony from the landlord.

As the landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package in June 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. The only written evidence supplied by either party was in the form of the tenant's application for dispute resolution

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to a monetary award for the cost of undertaking emergency repairs to the rental unit? Should any orders be issued to the landlord setting conditions on entry into

the tenant's rental unit by the landlord or members of the landlord's family? Should any other orders be issued with respect to this tenancy?

### Background and Evidence

This month-to-month tenancy began on March 15, 2018. The parties agreed that the monthly rent for the tenant's basement suite is set at \$900.00. There is another basement suite in this property and the landlord lives upstairs with his family. There is a \$450.00 security deposit for this tenancy paid when the tenancy began.

The tenant applied for a monetary award totalling \$1,050.00. The tenant requested a monetary of \$700.00 for the replacement of a set of tires that were stolen from outside his front door. The tenant maintained that this theft was the landlord's responsibility or the responsibility of the landlord's insurer because the gate to the yard was broken. This enabled easy entry to the yard where the tenant was storing these tires. The tenant said that the landlord had allowed him to store his tires and other belongings outside on this property.

The tenant's application also requested a monetary award of \$350.00 for the emergency repair of the broken gate in the property. At the hearing, the tenant testified that he had not undertaken these repairs, as the landlord had arranged for these repairs. The tenant still requested the installation of a lock on the gate so as to avoid future thefts and access to the yard by unauthorized people. At the hearing, the landlord agreed to have a locking mechanism installed on the gate and to provide keys to the tenants to enable them to access the property through the gate.

The tenant also requested that conditions be set on the landlord and his family to prevent unauthorized access to the tenant's rental suite by the landlord's children. The landlord maintained that the only times when his children accessed the tenant's rental unit was to drop off items such as mail and pieces of clothing with the tenant's permission. The landlord did agree that he and his family would abide by any order made to prevent them from accessing the rental unit without proper authorization during the remainder of this tenancy.

The co-tenant's principal sworn testimony was to confirm that everything the tenant said was true and that the tenant has had even more items than those claimed for in this application stolen from the yard.

### 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to demonstrate that there has been a contravention of the *Act* or his tenancy agreement by the landlord and that this contravention enables him to obtain a monetary award from the landlord.

Although there is no dispute that the tenant's tires were stolen, I find that the landlord is not responsible for items left outside the rental building by the tenant. These items were left in a location that the tenant clearly realized was not as secure as a location within the locked house. In addition, the tenant did not provide any evidence with respect to the age or condition of the tires, any receipts for these tires or any receipts for his purchase of replacements for the tires stolen. The tenant admitted that he had no tenant's insurance, which may have been able to compensate him for this loss. As I find that the landlord is not responsible for any loss that may have occurred for items the tenant left outside on the property and the tenant has not supplied any details to substantiate his loss, I dismiss this element of the tenant's application without leave to reapply.

At the hearing, the tenant confirmed that he has not conducted any emergency repairs at the rental unit. As such, the tenant's application for a monetary order for the cost of emergency repairs is dismissed without leave to reapply.

While the landlord has repaired the gate in question, the parties agreed that there was no locking mechanism on that gate. Since there has already been one theft on this property, I agree with the tenant that it would be advisable to have a lock installed to restrict access to this property. I order the landlord to install a locking mechanism on the gate by August 31, 2018, and to provide separate keys to any tenants in this rental property who may need to access the property from that gate.

Although there was conflicting testimony as to whether the tenant authorized the landlord's children to access his suite to deliver mail and other items to the tenant, I accept that it would be advisable to have an order in place to ensure that no further

allegations of unauthorized entry will be made. To that end, I order the landlord to provide 24 hours written notice to the tenant for any request to access the tenant's rental unit, unless there is an emergency situation which requires immediate access to the rental unit. This order is consistent with the provisions of sections 29 and 70 of the *Act*.

### Conclusion

I dismiss the tenant's application for a monetary award and repairs.

I order the landlord to install a locking mechanism on the gate by August 31, 2018, and to provide separate keys to any tenants in this rental property who may need to access the property from that gate.

I order the landlord to provide 24 hours written notice to the tenant for any request to access the tenant's rental unit, unless there is an emergency situation which requires immediate access to the rental unit.

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: July 28, 2018

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Residential Tenancy Branch