

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

**Dispute Codes:** *MNSD, FF, O*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to section 38 of the *Residential Tenancy Act* for a monetary order for the return of the security deposit. The tenant also applied for the recovery of the filing fee and for compensation for harassment and loss of both, quiet enjoyment and an essential service. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenants are a couple aged 84 and 88 years old. They were represented in the hearing, by their daughter PM. The 88 year old male has a disability that requires him to use a walker.

### **Issues to be Decided**

Is the tenant entitled to a monetary order for the return of the security deposit, the filing fee and compensation for the loss of quiet enjoyment and an essential service? Did the landlord harass the tenant?

### **Background and Evidence**

The tenancy started on June 15, 2003. Prior to moving in the tenant paid a security deposit of \$380.00. The monthly rent at the time the tenancy ended was \$860.00. On May 26, 2009, the landlord served the tenant with a notice to end tenancy for cause effective June 30, 2009. The tenant applied for dispute resolution on June 01, 2009. The tenant's application was for a monetary order.

### **Tenant's testimony:**

The tenant stated that, after serving the notice to end tenancy on May 26, 2009, the landlord wrote the tenants a total of 13 letters from that day to June 23, 2009. The letters consisted of complaints regarding the light fixtures, the modified toilet seat, the condition of the walls, the broken thermostat etc.

PM responded to every letter and made efforts to comply with the landlord's requests and set up two appointments to discuss issues. The landlord did not attend both appointments. PM stated that her parents' health deteriorated with the anxiety and worry generated from the eviction notice and the excessive number of complaints, some frivolous, from the landlord.

In addition, the landlord turned the heating off on May 24, 2009 and caused the tenants considerable discomfort at night, when the temperatures dropped. The landlord gave the tenants a small electric heater which was inadequate for a two bedroom suite. The lack of heating along with the stress of the eviction notice and the letters of complaint from the landlord caused a further decline in the health and well being of the tenants.

PM testified that in September 2004, the tenant broke his hip and Veteran Affairs installed a raised toilet seat for his use. PM admitted that landlord's permission was not sought to make this change to the toilet. PM stated that the landlord was always aware of this modification and conducted a five year inspection of the suite in September 2008. The landlord did not raise any objections to the change from September 2004, until April 2009 when the tenant contacted the landlord regarding a malfunctioning thermostat.

At the landlord's request, the tenant hired a certified plumber to conduct an inspection of the toilet, at a cost of \$104.70 to the tenant. The plumber's invoice and letter state that he inspected the toilet bowl, wax seals and bolts and found all to be in working order. Despite the letter confirming that the wax seal was in working order, the tenant stated that she was advised by the landlord that because the bolts that secured the toilet bowl to the floor, had come loose in the recent past, it was necessary to have the wax seal changed. The tenant had the seal and bolts changed at a cost of \$178.20 to the tenant. The tenant filed the letter and both invoices into evidence.

On June 30, 2009, a move out inspection was conducted and the landlord agreed to return the security deposit with deductions for rent for July and the cost to fix the thermostat. The tenant did not agree to the deductions and refused to sign for them. The tenant filed a copy of the move out inspection report and a copy of an invoice for professional carpet cleaning paid for by the tenant.

The tenant has applied for compensation for the loss of enjoyment in the amount of two month's rent (\$1720.00). The tenant has also applied for the return of her security deposit (\$380.00), the plumbing costs (\$178.20) and the filing fee (\$50.00).

Landlord's testimony:

The landlord testified that the modification to the toilet had compromised the plumbing and in April 2009, she asked that repairs be conducted. The landlord stated that the unauthorized modifications had caused the toilet to come loose off the floor and even though the tenant had fixed the bolts back, there was a potential for sewage to leak out. The landlord insisted that the tenant get a plumber to inspect the toilet and provide a report. The landlord also stated that she had reason to believe that if a toilet bowl gets loose, the wax seal must be changed and since the modification caused the bowl to get loose, the tenant was responsible for the cost of changing the wax seal.

The landlord denied having harassed the tenants but admitted to having turned the heating off on May 24, 2009. The landlord stated that it was standard practice to do so when the weather turned hot. The landlord stated that electric heaters were made available for tenants' use if necessary.

The landlord has a claim against the tenant and has filed for dispute resolution. This application will be heard on October 30, 2009.

**Analysis**

Quiet Enjoyment

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In this case, the landlord cut off heat to the rental unit and provided a small electric heater instead. As per the tenancy agreement, heat is included in the rent while the tenant is responsible for the cost of electricity.

I find that cutting off the heat supply to the tenants, caused them discomfort which resulted in a decline in their health and a loss of quiet enjoyment. In addition, the tenants incurred the cost of electricity for the use of the heater.

PM stated that the numerous letters of complaint and the tone of verbal communication of the landlord amounted to harassment and caused the tenants extreme distress and anxiety. Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. I find that by sending the tenant numerous letters of complaint in a short period of time, the landlord engaged in a conduct that she ought reasonably to have known was unwelcome.

I find that by shutting off the heat and sending numerous letters of complaint to the tenant, the tenant suffered a loss of quiet enjoyment which reduced the value of the tenancy. In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

In this case the heating was cut off on May 24, 2009 and the letters of complaint began around the same time. The tenancy ended on June 30, 2009 and therefore this situation existed for a period of approximately five weeks. Since heat was included in the rent while the electricity was not, the tenant also incurred an additional cost in utilities. I find it appropriate to award the tenant \$500.00 for loss of quiet enjoyment and increased utilities, over this period.

#### Plumbing costs:

The tenant complied with the request of the landlord to have the toilet inspected and did so at his own expense. Despite the plumber's report that the toilet and specifically the wax seal were in working order, the landlord insisted on having the wax seal replaced. Therefore, I find that the landlord must bear the cost of the replacement of the wax seal in the amount of \$178.20.

Security Deposit:

The tenant has applied for the return of his security deposit. At the move out inspection, the tenant did not agree with the deductions that the landlord intended to make. In any case, even if proven to be true, the landlord's monetary claim for deductions off the security deposit is not a relevant consideration in determining an application under section 38, on a tenant's application. The landlord's monetary claims will be heard by a Dispute Resolution Officer On October 30, 2009. In fact, the tenant's right to the return of the security deposit under section 38 has to be enforced regardless of what other factors exist. Therefore, at this time, I award the tenant the security deposit along with the accrued interest.

Filing Fee:

I find that the tenant is entitled to the recovery of the filing fee.

The tenant has established a claim for the following:

1.	Loss of quiet enjoyment	\$500.00
2.	Plumbing costs	\$178.20
3.	Security deposit + accrued interest	\$393.46
4.	Filing Fee	\$50.00
	Total	<b>\$1121.66</b>

Conclusion

I hereby grant the tenant an order under section 67 of the *Residential Tenancy Act*, for the total of **\$1121.66**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 15, 2009.

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Dispute Resolution Officer