



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes MNDC, MNSD, FF, O

### Introduction

This matter dealt with an application by the tenant. An amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were given to the landlord in person on June 12, 2009.

Having heard the affirmed evidence of the parties and witness and having given the parties the opportunity to give their evidence orally and to provide written and documentary evidence, and to cross-examine the other party and witness and to make submissions to me, I have determined:

### Issues(s) to be Decided

This is a request for a monetary order for \$2,626.76, for damage or loss and a request for an order for the landlord to return the tenants security deposit, other issues and a request for the respondent to bear the cost of the filing fee paid for this application.

### Background and Evidence

This tenancy started on April 01, 2007. The tenant rents a basement suite for \$800.00 per month; rent was due on the first of each month. This is a month to month tenancy. The tenant paid a security deposit of \$400.00 on April 01, 2007.

The tenant testifies that on December 22, 2008 the water pipes burst in the wall behind the kitchen cabinets and the water damage spread throughout his suite. The tenant had to find some alternative accommodation for cooking, eating and living while some of the contractors were carrying out the

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work. The tenant testifies that the landlord agreed to pay for this. The tenant did not fully move out of the suite but paid additional rent of \$300.00 per month for January, February and March for the use of facilities at his additional accommodation. The landlord agreed that the tenant did not have to pay rent for January and February, 2009 while the renovation work was being completed.

In March, 2009 the landlord requested that the tenant pay his rent despite the renovation work not being completed. The tenant paid \$800.00 to the landlord on March 01, 2009. The tenant claims that the water damage has still not been repaired despite the landlord receiving an insurance award to pay for the renovations. The photographic evidence clearly shows the suite in a state of disrepair. There are boxes and materials in the basement; repairs to dry rock not completed; no kitchen cupboards or sink; flooring incomplete and ill-fitted carpets causing a hazard. In addition to this the tenant testifies that their remains a broken window, holes in the walls and no cover on the bathroom vent which was work that was supposed to have been completed since the tenancy started. On March 26, 2009 the tenant approached a senior citizens office to intervene on his behalf and a member of this office is acting as the tenants advocate. Another member of this office was a witness to the state of the tenants' suite and gives evidence that it was not habitable for the tenants use for general living as it was in a state of construction.

The tenant testifies that he moved back into the suite completely on April 13, 2009 although the suite was still not habitable. He testifies that to this date some of the work is still not completed. The tenant access to the yard and basement is impeded, there remains boxes and building materials in the suite, There is no dry rock on the laundry walls; the carpet remains a tripping hazard; the broken window, holes in the walls and bathroom vent cover have still not been repaired. The tenant intends to move from the suite at the end of September, 2009.

The landlord testifies that the tenant did not move completely from the suite and therefore he should not have to pay for alternative accommodation. The landlord agrees that he asked the tenant to pay rent for March, 2009 as he needed the rent money coming in but feels that as he gave the tenant two months free rent this was enough to compensate the tenant for the damage to his suite. The landlord states that the renovation work is still ongoing. He testifies that he did receive \$10,000.00 from the insurance company to complete the work and to cover his loss of income for 60 days. He elected to do the work himself by hiring contractors and this has taken considerable time. The

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landlord also testifies that he feels the tenant has not been cooperative with the contractors which has delayed the work.

## Analysis

The *Residential Tenancy Act* (Act) section 32 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.

Section 27 of the Act states:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that the water pipes burst was a 'no fault' cause of the damage to the rental suite. However, the landlord did not act expediently in carrying out the repairs in order to comply with the sections



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32(1) and 27 of the Act. I find the tenant is entitled to compensation for costs he incurred in finding alternative accommodation for three months for the essential aspects of his daily life to a sum of **\$900.00**. I also find the tenant is entitled to recover the rent he paid for 10 days in December, 2008 of **\$258.06**, for March, 2009 of **\$800.00** and for 10 days in April, 2009 of **\$258.06** due to living with on going construction work and limited facilities. As the landlord had been given an amount to cover his loss of rental income for 60 days he should have endeavoured to complete the work within that timeframe to mitigate the loss to the tenant of his living space. I accept that the tenant continued to use the rental unit during this time but his quality of life was substantially reduced due to the on-going renovation work.

The tenant has also applied for an Order for the return of his security deposit. However, this section of his claim has been withdrawn due to it being premature to his move out date. The tenant is at liberty to reapply for this after he has vacated the rental suite if the security deposit is not returned within 15 days of the tenant providing the landlord with his forwarding address in writing.

As the tenant has been successful with his claim he is entitled to recover the \$50.00 from the landlord for the cost of filing his application. A Monetary Order has been issued for the following amount: **\$2,266.12**

## Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,266.12**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: September 22, 2009.

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Dispute Resolution Officer