

## **DECISION**

Dispute Codes:

**MNDC, FF**

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the landlord has made application for compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss in the sum of \$500.00?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenant has lived in the rental unit since September 2007 and currently pays \$1,575.00 per month rent.

The tenant is claiming a loss of \$500.00, as she lost the use of a portion of her rental unit for a period of time as the result of a flood caused by a hot water tank.

During the hearing the hearing the parties agreed on the following facts:

- On January 17, 2010, the hot water tank developed a leak;
- That within several hours the landlord's repair person was on site;
- That for approximately 5 hours on January 17, 2010, the power in the rental unit was turned off, as a precaution; and
- That from the evening of January 17 to the afternoon of January 22<sup>nd</sup>, 2010, there were fans and dehumidifiers running in the rental unit.

The tenant agreed that the landlord did provide a prompt response to the failure of the tank, that someone came to the unit on the night of January 17, 2010, to clean up the water and that over the next few days workers attended at the unit to make the required repairs.

On the night of January 17, 2010, the tenant and her daughter had to go out for dinner, as they did not have power. Over the next few days the tenant spent time going back and forth from her workplace, which is in close proximity to her home, in order to let the workers into the unit. The tenant had not asked the landlord to do this.

The tenant is claiming loss of use of her rental unit as she could not enjoy the living room, due to the extremely loud and constant sound coming from the fans that were required to run throughout the evenings when she was home. The tenant also had difficulty sleeping while the fans were running. The tenant lost use of the hot water tank closet for a short period of time and the hallway closet for 3 days. The carpets were lifted for several days in order to allow better drying.

The landlord supplied photographs that provided evidence of the fans and the movement of some furniture and the stove, to accommodate repairs.

During the hearing the landlord offered to have the tenant bring proof of increased hydro costs to them and that compensation for any excess hydro would be provided.

The landlord submitted that these events happen in homes, that they are not unexpected and that the tenant is not entitled to compensation beyond the cost of hydro.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 28 of the Act, provides the following:

**28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

While temporary inconvenience does not constitute a loss of quiet enjoyment and a landlord has the right to make repairs, Residential Tenancy Branch policy suggests that a tenant may be entitled to some compensation, even if the landlord has made efforts to minimize disruptions.

I find that the tenant has experienced some loss of quiet enjoyment, in the evenings, as the result of the disturbance caused by the fans. I have rejected any claim related to the loss of power for the evening of January 17, 2010, the use of closet space and time taken to let workers into the rental unit, as these were temporary inconveniences and the tenant could have requested that the landlord provide the workers with access.

Therefore, I find that the tenant has verified that the fans were present and that, despite the landlord's prompt response to the need for repair, that the tenant did experience some level of loss of use of the rental unit for the 5 evenings the fans were running in her home. Therefore, I find that the tenant is entitled to compensation in the sum of \$100.00 which may be deducted from the next month's rent owed.

As the tenant's Application has merit, I find that the tenant may deduct the \$50.00 filing fee from the next month's rent owed.

Therefore, pursuant to section 67 of the Act, the tenant may make a one-time deduction from the next month's rent owed in the sum of \$150.00.

### Conclusion

I find that the tenant has established a monetary claim, in the amount of \$150.00, which is comprised of \$100.00 in damages and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

The tenant will deduct \$150.00 from the next month's rent owed.

The landlord has agreed to compensate the tenant for any excess hydro costs, once the tenant provides copies of the requested evidence to the landlord.

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 23, 2010.

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Dispute Resolution Officer