



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      MNDC, RP, RR, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of this application.

The parties each gave affirmed evidence and were given the opportunity to cross-examine each other on their evidence.

At the outset of the hearing, both parties agreed that evidence provided by both parties less than the 5 clear days provided for in the Residential Tenancy Branch Rules of Procedure should be allowed and considered in this Decision. I hereby order that the evidence received, which was exchanged by the parties, form part of this hearing and will be considered in this Decision.

### **Issues(s) to be Decided**

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?
- Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

### **Background and Evidence**

This month-to-month tenancy began on November 1, 2000. Rent in the amount of \$1,568.00 is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. The landlord collected a security deposit from the tenant in the amount of \$650.00 on October 6, 2000. The rental unit is a house with a basement suite, both rented by the tenant, and the tenant rents out the basement suite. The tenant stated that her mother had lived in the basement suite, and the tenant's daughter now resides there.

The tenant testified that she has asked for painting inside her unit for about a year. She stated that she phoned the property management company, and discussed it with the landlord's agent during an inspection. She also sent the landlord 2 letters which addressed other concerns as well. After the first letter was written, some of the concerns were taken care of by the landlord, and the second letter confirms what was done, but painting the unit was not completed. She further stated that the landlord has not responded at all to the second letter. She stated that the unit has not been painted during the 10 years of her tenancy, and that when she moved in, she was told the unit had been painted 2 years prior to that. The tenant provided photographs of the house in advance of the hearing that clearly show peeled and worn paint, as well as large cracks between the outside door and the door frame which lets in light and the outside elements.

The tenant also testified that new doors are required because the ones currently in the house don't fit; the bathroom window doesn't open and there is no fan in that bathroom, which causes mould to build up.

The tenant further testified that the furnace has not been serviced, and for 2 winters she was required to use electric heaters because the furnace would not start. She stated that she phoned the landlord in January, 2009 and was promised that it would get fixed but it didn't. The furnace wasn't serviced until the following January and she was unable to get tenants' insurance while she was using the electric heaters. She stated

that the previous property management company had scheduled routine servicing. The furnace is an oil burning unit.

The tenant is claiming recovery of excess hydro bills, and provided verbal testimony of what the hydro bills were prior to the furnace problem and after. The hydro bill for November and December, 2007 was \$280.00, for 2008 the bill was \$416.00, and \$409.00 for 2009. For January and February, 2007 the hydro bill was \$230.00; for 2008 \$440.00 and 2009 \$476.00. She further testified that it costs about \$500.00 to fill the oil tank, which is the responsibility of the tenant, and that would last her from November to February, or \$70.00 to \$80.00 per month.

The landlord's agent testified that the owner does not have the funding to paint the house; there are other priorities, including replacing the roof before winter. She stated the house is an older house with single pane windows, and the estimated quote to complete the painting would be about \$8,000.00. The cost to do the roof is about \$9,000.00.

The landlord's agent further testified that she was unaware that the tenant had called about the furnace in January, 2009. She stated that she may have called, and the call may have been missed, but the tenant did not call back.

The landlord's agent also testified that the house is in reasonable condition. She stated that she is aware that the landlord is required to maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and that the house does comply with those standards. She did not dispute the fact that the house had not been painted in excess of 10 years.

The landlord provided copies of invoices and work orders, in advance of the hearing, which show that a number of repairs have been completed by the landlord during the tenancy. The tenant did not dispute that those repairs had been completed.

## **Analysis**

With respect to the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, the onus is on the claiming party to prove the 4 part test for damages:

1. That the damage or loss exists;
2. That the damage or loss is the result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount;
4. What steps the claiming party took to mitigate the damage or loss.

Using the figures provided by the tenant in her verbal testimony, that it costs about \$500.00 to fill the tank which would last from November to December, I find that the difference between what the hydro bills were in 2007 compared to 2008 and 2009 totals less than the \$500.00 the tenant would have paid to heat the rental unit. Further, there is no evidence before me that the tenant suffered any other loss or damages.

Therefore, I find that the tenant has failed to establish any loss or damage under the *Act*, regulation or tenancy agreement.

With respect to the tenant's application that the tenant be entitled to reduce rent for repairs, services or facilities agreed upon but not provided, I have no evidence before me that any agreement existed between the parties for repairs, services or facilities. Therefore, the tenant has not established any entitlement to reduced rent.

With respect to repairs to the unit, site or property, I rely on the Residential Tenancy Policy Guidelines which state that, "The landlord is responsible for painting the interior of the rental unit at reasonable intervals." I cannot find that 10 or 12 years is a reasonable interval, and the photographs clearly show that the unit is in need of paint in order to bring the unit to the state of decoration and repair required by the *Act*.

I also find that the tenant has established that the exterior doors to the rental unit do not fit properly, and therefore, the landlord has not met the obligation under Section 32 of the *Residential Tenancy Act*.

Further, the Policy Guidelines also state that the landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications.

### **Conclusion**

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenant's application for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided is hereby dismissed.

With respect to the tenant's application for an order that the landlord make repairs to the unit, site or property, I hereby order that the landlord complete the painting required inside the rental unit that bring the unit to the standard required under Section 32 of the *Residential Tenancy Act*. I further order that the landlord replace the exterior doors to the unit to bring the unit to the standard required under Section 32. I also order that the landlord inspect and service the furnace annually, or more often if the manufacturer's specifications state that servicing should be done more often than annually. Should the landlord fail to complete those repairs within a reasonable time, it will be open to the tenant to reapply for a monetary order for compensation for failing to comply with this order.

Since the tenant has been partially successful with her application, the tenant is entitled to recovery of the filing fee for the cost of this application, and I hereby order that the tenant reduce the next month of rent by the amount of \$50.00.

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: August 4, 2010.

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Dispute Resolution Officer

