



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC OPC, MND, MNR, MNSD, FF

### Introduction

A substantial amount of documentary evidence, photo/electronic evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenants application is a request for a monetary order in the amount \$6,000.00.

The landlord's application was a request for an Order of Possession, and a request for a monetary order in the amount of \$2597.61. The landlord further requested an order that the tenants bear the \$50.00 cost of the filing fee which they paid for their application for dispute resolution. By the time of the hearing the tenant had already vacated the rental unit and therefore an Order of Possession is no longer required.

## Background and Evidence

The tenant testified that:

- There has been an ongoing problem with the drains at the rental unit plugging and as a result he has had a substantial loss of use and enjoyment of the rental property.
- He has had to endure not only loss of use of the kitchen sink, but also ongoing visits from the landlord and numerous repair persons.
- The original dishwasher in the rental unit broke down and had to be replaced and therefore he had loss of use of that dishwasher for a period of time, and then the landlord removed the second dishwasher claiming that it was leaking when in fact it was not, and as a result he also had loss of use of that dishwasher.
- After the second dishwasher was removed the landlord never replaced it.
- During one visit to the property the landlord turned off the power supply to the rental unit and as a result he lost approximately 6 weeks' worth of work off of his computer.

Due to all these disruptions, loss of use, and loss of data from his computer the tenant is requesting the following:

Return one half of all rent paid during the tenancy	\$2400.00
Total	\$6000.00

The landlord testified that:

- They promptly dealt with the plug drains as soon as they were notified of the problem by the tenant.
- The tenant claims to have had plugged drains right from the beginning of a tenancy however they were not informed of any problems with the drains until September well after this tenancy began.
- They brought professionals in to clear the drains and try and resolve the drainage problem.

- Each time the problem seemed to have been resolved, however for some reason the drains would again plug up and they believe it was due to the unsanitary practices of the tenant.
- During this tenancy the tenant used the dishwasher when he knew that the drains were plugged and as a result destroyed two dishwashers.
- When they discovered the tenant had destroyed the second dishwasher they unplug the dishwasher so it could not be used however the tenant plug the dishwasher back in, continued to use it and caused further damage as the water leaked into the suite below and stained the ceiling panels.
- Since the tenant continue to use the dishwasher even though he had been told not to they had to go back in and remove the dishwasher. They did not replace dishwasher with another because the tenant had already destroyed two dishwashers and they did not think it was prudent to put in another for him to ruin.
- They do not believe that they should have to pay any compensation to the tenant for loss of use because they dealt with the issues as soon as they were informed of the problem.
- They further do not believe that there was any damage to the tenant's computer as it appears to be working fine in the tenants own video.
- The electrical interruption was not caused by the landlords turning off the electricity, it was a result of an accident where the electrical panel cover slid and turned off some of the electrical breakers, and as well they had given the tenant prior warning that they would be working on the electrical breakers and therefore he should have taken precautions to ensure that his computer would not be affected if there was an electrical interruption.
- The tenant also failed to give proper Notice to End Tenancy and as a result they lost the full rental revenue for the month of December 2010. They had given a Notice to End Tenancy to the tenant that would have ended his tenancy on December 31 however the tenants vacated on November 30, 2010 without proper notice.

The landlords therefore believe that the tenant's full claim should be dismissed as an attempt at extortion, and that an order should be issued in the landlord's favour as follows:

Replace original dishwasher	\$480.48
Plumbing costs	\$429.97
Replace water damaged ceiling panel	\$6.68
Lost rental revenue for December 2010	\$1200.00
Filing fee	\$50.00
Total	\$2647.61

In response to the landlord's testimony the tenant testified that:

- He does not believe that the landlords did do their due diligence with regards to the plugged drain as they never followed the recommendation to have a camera sent down the drain.
- He did not cause the damage to the original dishwasher, it broke under normal use, and the second dishwasher was not even broken and was not leaking when the landlords removed it.
- There was a problem in the drain line that caused the plugging, it was not as a result of anything he did. He was not doing anything to plug the drains, they would plug up under normal use.
- He never at any time removed a panel and plugged the dishwasher back in. It was still plugged been after the landlords left.
- His computer did still work after the landlords turned off the power; however he lost six weeks of work that had not been backed up. This was the direct result of the landlords turning off the power and he disputes that the power was accidentally switched off.
- The landlords did notify him that they would be working on the breakers; however he was never informed that the power would be turned off to his computers.
- The landlord gave him a Notice to End Tenancy that was incorrectly filled out, stating that he had to vacate by December 11, 2010 even though legally the notice was

effective December 31, 2010. Therefore he should not be held liable for giving the landlords short notice to vacate.

- The landlords accepted the short notice to vacate which is proven by the fact that they proposed move-out inspection dates of early December.
- He has driven by the suite and it appears to him that the suite has been re-rented.

The tenant therefore believes that the landlord's full claim should be dismissed and that they should be required to compensate him \$6,000.00 as requested in his claim.

In response to the tenant's further testimony the landlords testified that:

- The second dishwasher was leaking and the photos provided by both landlord and the tenant verify that, as does the damage caused in the suite below.
- They did unplug the dishwasher on November 8, 2010 and someone in the tenants house plugged it back in and started using the dishwasher again causing further leaking, and possibly further damage to the dishwasher.
- They did not turn off the power to the tenant's computers on purpose, it was caused when the electrical panel cover fell.
- The suite is still empty and has not been re-rented

### Analysis

It is my decision that I will not allow any of the tenant's claims for compensation.

I am convinced by the testimony and evidence presented, that the landlords acted in a reasonable manner to try and rectify the problems with the drainage issues.

Although there were numerous drainage problems, it is my decision that the landlords cannot be held liable for a problem over which they had no control. The tenant argued that the landlords did not do everything possible to resolve the problem because they did not put

a camera down the drain, however the tenant is not a plumber and I accept that the landlords were acting on the advice of their professional plumbers.

I also deny the tenants claim for \$3600.00 for the loss of six weeks of work. The tenant has supplied no evidence, other than his word, to support his claim of lost data, and it is my finding that the tenant did not take reasonable steps to mitigate any possible loss, as he had been informed that the landlords would be working on the breakers. This should have been a good indication that there was a possibility of electrical interruption.

It is also my decision that I will not allow the landlords claims for damages or plumbing, because the landlords have not met the burden of proving that the drainage problems were caused by the tenant, or that the damage to the dishwashers was the result of any negligence on the part of the tenant. Although the landlords believe the dishwashers were damaged by negligence on the part of the tenant they have supplied no proof in support of that claim, and it is possible that they both broke down due to normal wear and tear.

I also deny the landlords claim for the damaged ceiling tile, because again there is no evidence to prove that the leak was a result of any negligence on the part of the tenant. The landlords claim that the tenant plugged the dishwasher back in however it is basically their word against the tenants and the tenant denies plugging it back in.

I will allow the claim for lost rental revenue for the month of December 2010 however because the tenant did not give the required notice to end the tenancy, and is my decision that the tenant did not have the right to move on short notice.

The tenant argued that the landlords should have informed him of his rights when he was given a Notice to End Tenancy, however it is not the landlords responsibility to educate the tenant on his rights and responsibilities.



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The Notice to End Tenancy given to the tenant ended the tenancy on December 31, 2010 however the tenant vacated at the end of November 2010 without proper notice and as a result the landlords have lost the full rental revenue for the month of December 2010.

I also allow the landlords claim for the filing fee.

## Conclusion

The tenants claim is dismissed in full without leave to reapply.

I have allowed \$1250.00 of the landlords claim, and therefore the landlords may retain the full security/pet deposit of \$1200.00 and have issued a monetary order in 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: December 17, 2010.

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Dispute Resolution Officer