



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally on October 5, 2010.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to be awarded monetary compensation as a result of the breach?

### Background and Evidence

The parties entered into a six month fixed term tenancy agreement effective September 1, 2010, after which they would re-negotiate another six term lease. Rent was payable on the first of each month in the amount of \$1,700.00. The Tenant paid \$850.00 on August 10, 2010 as the security deposit.

The Tenant testified that when he first looked at the rental unit the Landlord told him that he had the furnace inspected by the natural gas company and they had found a small gas leak which was repaired. After occupying the rental property he stated he did not feel well so he had the furnace inspected and found that it was still leaking natural gas. He called the Landlord's son and requested the furnace be replaced. The Landlord's

son came and inspected the unit and told the Tenant he would contact the Landlord and get back to him. The Landlord's son came later with a used furnace to be installed. A discussion followed. The Tenant chose to have a contractor come to the rental unit without the Landlord's permission to shut off the natural gas.

The Landlord testified that he was out of the country for approximately six weeks so he had left contact information with the Tenant to contact his son in case of an emergency. He had daily contact with his son about the furnace issue and he had instructed his son to arrange to change the furnace if needed. He was told that the Tenant wanted his friend to install the furnace at a higher cost than what the Landlord's son could arrange so they were not going to hire the Tenant's friend. This caused the Tenant to become upset.

When the Landlord returned to the country he was immediately approached by the Tenant who was demanding the Landlord sign a mutual agreement to end the tenancy. The Landlord advised that he did not want his Tenant to be uncomfortable in his house so he agreed to sign the mutual agreement to end the tenancy. Then the Tenant demanded that he write him a cheque for the refund of his full security deposit. The Landlord wanted to be accommodating so he agreed and gave the Tenant the full security deposit without checking the rental unit for damages. The Tenant vacated the property October 1, 2010. The Landlord's cheque was cashed on October 4, 2010 and the Tenant served the Landlord with notice of dispute resolution on October 5, 2010.

The Landlord installed a new furnace October 8, 2010. Then two weeks ago, mid January 2011, he received a call from his current tenant who was upset because the Tenant attended the unit and tried to scare her about the furnace leaking natural gas. The Landlord also pointed out that the average temperature in September was +19 degrees Celsius.

The Tenant stated that he was not mad at the Landlord's son. He confirmed that he went to the rental unit a few weeks ago and told the current tenant about the natural gas leak. He is of the opinion that he is entitled to the return of his September 2010 rent of \$1,700.00 plus \$500.00 for the cost of moving out of the unit October 1, 2010 because of the natural gas leak.

### Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage

or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

After careful consideration of the testimony and evidence I find the tenancy ended October 1, 2010, after mutual written agreement between the parties. The evidence further supports the Landlord complied with the Act by having his son available as an emergency contact person during his absence and by having his son make the required arrangements to have the furnace replaced. The Tenant occupied the rental property for the full month of September 2010 and is therefore responsible to pay rent for that period.

Based on the aforementioned I find the Tenant has provided insufficient evidence to support the Landlord breached the Act. The Tenant chose to incur the cost of moving when he insisted the Landlord agree to mutually end the tenancy. Therefore the has not met the burden of proof required to establish the test for damage or loss, as listed above, and I hereby dismiss his claim without leave to reapply.

The Tenant has not been successful with his claim; therefore he must bear the burden of his own cost to make this application.

#### Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: February 07, 2011.

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Residential Tenancy Branch