



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

MND, OLC, FF

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order that the Landlord comply with the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties appeared at the Hearing, gave affirmed testimony, and had an opportunity to be heard and respond to the other party's submissions.

This matter was originally scheduled for February 14, 2011. On that date, the Landlord's agent made an application to adjourn so that he would have more time to prepare for the Hearing and provide evidence. The Landlord's agent's application was granted.

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

Is the Tenant entitled to an Order and compensation under Sections 62(3), 67 and 72(1) of the *Residential Tenancy Act* (the "Act").

### **Background and Evidence**

The parties entered into a tenancy agreement on December 15, 2005. The rental unit is a one bedroom apartment in a 93 unit building, which is 43 years old. The tenancy began on January 2, 2006. At the beginning of the tenancy rent was \$850.00 per

month. The current monthly rent is \$945.00, due on the first day of each month. Heat and a pool are included in the rent.

The Tenant's advocate gave the following submissions:

The Tenant's advocate testified that the heat in the rental unit has been insufficient and/or intermittent, since 2005. He stated that in 2005 and 2006, there were days at a time where there was no heat at all in the rental unit.

In November, 2007, the Tenant complained to the Landlord that she did not have sufficient heat in her apartment. The Landlord attempted to address the problem, but was not successful until January, 2008. The Landlord provided the Tenant with electric heaters in an attempt to supply more heat, but the heaters were inadequate. The Tenant's roommate moved out of the rental unit because it was too cold. The Tenant believes the boiler system failed due to neglect on the Landlord's behalf and that the Landlord failed to educate the Landlord's agent with respect to the heating system. The Tenant's advocate submitted that sediment build-up occurs over time and that the boiler was not adequately maintained.

The Tenant's advocate stated that the Tenant had to stay with her brother (who lives 60 kms away, return) because her home was too cold. The Tenant incurred travel costs, estimated at \$450.00 per month for three months. He stated that the Tenant had to pay additional electrical costs to heat her home (electrical heaters and stove), estimated at \$150.00. The Tenant seeks a monetary award, pursuant to the provisions of Section 67 of the Act, in the total amount of \$1,500.00 for these losses.

The Tenant's advocate stated that Landlord failed to comply with the provisions of Section 32 of the Act (obligation to repair and maintain the rental property). Pursuant to the provisions of Section 65(1) of the Act, the Tenant seeks a reduction in past rent for the months of November and December, 2007 and January, 2008, in the amount of 100% of the rent paid (\$2,595.00).

The tenancy agreement included use of a pool. The Tenant is pregnant and would like to use the pool 3 or 4 times a week but cannot because the pool has been closed for repairs since the end of July, 2010. Pursuant to the provisions of Section 62(3) of the Act, the Tenant seeks an Order for the Landlord to comply with Section 32 of the Act and bring the pool into a state of good repair. The Tenant also seeks compensation in the amount of \$600.00 (\$100.00 per month) for the loss of the use of the pool.

The Tenant seeks an additional monetary award in the amount of \$1,000.00 for harassment. The Tenant's advocate submitted that the Landlord's agent has harassed the Tenant, as follows:

- On February 2, 2009, the Landlord's agent contacted the Tenant's former employer and advised him that the Tenant was late paying rent. At the time of the phone call, the Landlord's agent believed he was contacting the Tenant's current employer, and the Tenant believes he intended to cause her embarrassment.
- On January 20, 2011, the Landlord's agent told the Tenant she might be happier living somewhere else and that she should move out.
- The Tenant's requested new window coverings to replace broken blinds. Other tenants in the building got their new window coverings, but the Tenant had to wait an additional 2 months.
- The Landlord's agent told the Tenant's boyfriend that he could not park in visitor's parking. The Tenant's boyfriend parked there anyway, and his truck was keyed. The Landlord's agent told the Tenant that he knew who did it, but would not tell the Tenant who it was.

The Landlord's agent's gave the following testimony:

The Landlord's agent started working for the Landlord on May 17, 2007, and has no knowledge of events that occurred before that date. The Landlord's agent does not

dispute that something was wrong with the heating system, but disputes it was as a result of negligence on behalf of the Landlord. He stated that sludge can build up very quickly and that impellers break down regularly due to normal wear, and that after the incidents of 2007, he made sure that the furnace was inspected every 3 months as regular maintenance. He stated that there has been no further issue with the boiler since the winter of 2007/2008, and has had no further complaints except from a few suites. He submitted that the problems were addressed as quickly as possible.

The Landlord's agent submitted that there was no documentary evidence to support the Tenant's claim of increased heating charges. He stated that the City inspected the rental property and were satisfied with the heating system at the rental unit.

The Landlord's agent stated that the major heating issues occurred years ago and that he was not aware of the Tenant's claim for compensation with respect to staying at her brother's prior to the teleconference.

The Landlord's agent stated that the pool was closed at the end of July, 2010, because of the age of the system. There had been a flood and a chemical imbalance in the pool; a backflow valve failed; and the vacuum was not working. The Landlord had full diagnostic done on the pool system and it was determined that the pool required a total overhaul. This will cost \$50,000.00, but the Landlord's agent expects it to be restored eventually. The Landlord's agent stated that a public pool was available ½ a km away at a cost of \$43.00 per month.

With respect to the Tenant's claim that he was harassing her, the Landlord's agent testified that he had not heard from the Tenant for several days and had not seen her at the rental property. He stated that he was worried about her and called the only name she had left on her contact list. He stated that he made the phone call on February 5, 2011.

With respect to the blinds, the Landlord's agent stated that he had asked the Tenant to wait until another suite needed blinds so the contractor could measure both suites at the same time, as a cost saving measure. The Landlord's agent stated that the blinds couldn't have been broken without abuse.

With respect to the Tenant's boyfriend parking in the visitor's parking, the Landlord's agent stated that her boyfriend's truck was a commercial oversized vehicle that was taking up both visitors' parking spaces and blocking an emergency exit. The Landlord's agent stated that he told the Tenant that he "expected" that he knew who keyed the truck, but didn't want to say who he suspected because he had no proof.

### **Analysis**

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. In this case, the onus of proof lies with the Tenant.

To prove a loss and have the Landlord pay for the loss requires the Tenant to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant's advocate provided submissions with respect to matters that were not plead in the Tenant's amended application. Therefore the Landlord had no notification that the Tenant would be requesting compensation for staying with her brother. I will be

making my decision based on the Tenant's amended application that was provided to the Landlord, indicating the Tenant's monetary claim as follows:

The equivalent of three months' rent (November , December 07 and January 08)	\$2,610.00
Compensation for inadequate heat for 2005 and 2006 and the loss of a roommate who was paying half of her rent	\$1,000.00
Compensation for increased hydro bills	\$200.00
Compensation for loss of use of pool	\$600.00
Compensation for harassment	\$400.00
<b>TOTAL MONETARY CLAIM</b>	<b>\$4,810.00</b>

Section 32 of the Act provides that a Landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law. For the Tenant to be successful in her claim under Section 67 of the Act, the Tenant must show that the Landlord breached the care owed to her and that the loss claimed was a foreseeable result of the wrong. The Tenant did not provide sufficient evidence that the Landlord breached Section 32 of the Act. When the Tenant provided the Landlord with written notification of her concerns about the lack of heat, the Landlord responded quickly to those written complaints.

Residential Tenancy Policy Guideline 16 provides, in part:

(If) "a tenant is deprived of the use of all or part of the rental premises through no fault of his or her own, the tenant may be entitled to damages even where there has been no negligence on the part of the landlord. In this case, compensation would be in the form of abatement in rent or a monetary award for a portion of the premises or property affected."

Based on the testimony and the documentary evidence provided, I am satisfied, through no fault of the Tenant's or the Landlord's, that the Tenant did not have adequate heat from November 28, 2007, to January 2, 2008. I allow the Tenant rent abatement for that period at 50% of the daily rent, in the amount of \$505.08, calculated as follows:

Monthly rent at that time = \$870.00

Daily rent (\$870.00/31) = \$28.06

# of days = 36

(\$28.06 x 36 days) x 50% = \$505.08

The Tenant did not provide specific dates or other details with respect to her claim for compensation for lack of heat in 2005 and 2006. Therefore, I find the Tenant did not provide sufficient evidence to support her claim for inadequate heat for 2005 and 2006 and this portion of her application is dismissed.

The Tenant did not provide sufficient evidence to support her claim for compensation for increased hydro bills. The Tenant did not provide copies of hydro bills for that period of time and for the same period of time for the previous or following year. This portion of her application is also dismissed.

The tenancy agreement clearly indicates that rent includes the use of the pool. The Landlord stated that a membership at a local pool is \$43.00 per month. Therefore, I allow the Tenant's claim in the amount of \$344.00 for the loss of the use of that facility (8 months at \$43.00 per month). I further provide the Tenant a rent reduction in the amount of \$43.00 per month, commencing April 1, 2011, until the pool is repaired and the Tenant has use of it. I decline to order the Landlord to repair the pool.

Based on the testimony of both parties, I do not find that the Landlord's agent has harassed the Tenant, and this portion of her application is dismissed. However, I caution the Landlord that calling a third party and discussing the Tenant's payment or non-payment of rent is inappropriate. Furthermore, I do not agree that blinds have to be abused to be broken. Blinds do not last forever and have to be replaced regularly, in accordance with the provisions of Section 32 of the Act. Residential Tenancy Policy Guideline 37 provides a useful life of blinds to be 10 years.

The Tenant has been partially successful in her application and is entitled to recover the \$50.00 filing fee.

I grant the Tenant a monetary award in the amount of \$899.08, calculated as follows:

Rent abatement for loss of heat	\$505.08
Rent abatement for loss of use of a facility included in rent	\$344.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL MONETARY AWARD	\$899.08

Pursuant to the provisions of Section 72(2)(a) of the Act, the Tenant may deduct her monetary award from future rent due to the Landlord.

### **Conclusion**

The Tenant has been granted a monetary award in the amount of \$899.08 and a rent reduction in the amount of \$43.00, commencing April 1, 2011. This rent reduction will remain in place until the Landlord repairs the pool. Pursuant to the provisions of Section 72(2)(a) of the Act, the Tenant may deduct her monetary award from future rent due to the Landlord. Therefore, rent for the month of April, 2011, will be \$2.92 (\$945.00 - \$899.08 - \$43.00). Rent for the month of May, 2011, will be \$902.00, and remain at \$902.00 until the Landlord has repaired the pool.

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: March 14, 2011.

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