



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, MNR, FF

### Introduction

This hearing dealt with the tenant's Application for a monetary order for money owed or compensation under the Residential Tenancy Act (the "Act") or tenancy agreement, for the costs of emergency repairs and to recover the filing fee for the Application.

The parties, the tenant's witnesses and the landlord's legal counsel appeared, were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenant to a monetary order for the relief requested?

### Background and Evidence

I heard testimony that this tenancy began on or about August 1, 2008, and ended on or about April 30, 2010, when the tenant vacated the rental unit.

The parties had a previous dispute resolution hearing, which resulted in the landlord establishing a monetary claim of \$890.00 and being granted a monetary order on March 23, 2011, in the amount of \$136.12, after deduction of the tenant's security deposit.

In this application, which the tenant filed one day after the issuance of the above mentioned monetary order, the tenant is requesting monetary compensation in the amount of \$25,000.00, as follows:

Thermostat	\$33.43
Steam cleaner rental	\$44.16
Plumbing snake rental	\$29.84
Compensation to brother, unpaid	\$1,000.00
Damage (security) deposit	\$700.00

Terasen gas invoice	\$714.00
Pain and suffering	\$11,000.00
Clean up charges, unpaid	\$11,375.00
<b>Total</b>	<b>\$25,000.00 (app.)</b>

The tenant's evidence consisted of a written statement from the tenant and his brother, a Terasen gas bill, an invoice for a thermostat, rental invoices, an unpaid invoice from the tenant's brother, a sewer service company's invoice, a heating company's invoice, print outs from a pharmacy describing the uses, interactions and side effects for certain medications, and the tenant's common-law spouse's medical history.

The tenant stated that he was just happy to move out of the rental unit, but that when the landlord "sued" him, he had to "sue" back.

The tenant testified that as a result of a sewer back-up in the Spring of 2009 and 2010, fecal matter and flooding water entered the rental unit, causing him and his common-law spouse and her daughter to suffer from boils, staph infections and nightmares.

The tenant testified that when the sewer backed up each year, he notified the landlord or the landlord's agent for emergency repairs, but that the landlord failed to respond. According to the tenant, it was necessary to take on the emergency repairs himself, or have his brother make the repairs and clean up, due to the landlord's lack of response.

Upon query, the tenant stated that he had made attempts to contact the landlord by telephone, but that he only had the landlord's answering machine and not his direct number. I note that the tenant was non-specific as to when the calls were made.

During the 2010 sewer back-up, the tenant's brother had to clean out the line. Also during the tenancy, according to the tenant, the furnace began malfunctioning, necessitating the tenant's brother to make a thermostat change. The tenant claimed that he had higher than average gas bills for this time period, which is why he is claiming for this amount.

In his testimony, the tenant admitted that the landlord had reimbursed the tenant fully for the sewer and any other issues for 2009; however he still made application for compensation relating to both 2009 and 2010.

Upon my query to the tenant about his claim for \$11,000.00 for pain and suffering, the tenant stated that it was "greed" on his part as he was mad at the landlord for having made a claim against him.

Upon query, the tenant stated that he arrived at the sum of \$11,375.00 for clean up after consulting a professional cleaning company and obtaining their rates.

As evidence, the landlord submitted statements from real estate agents referencing the clean condition of the rental unit, a statement from the landlord's present tenant, statements from the cleaner/repairman referencing the damage left and clean-up necessary for the rental unit after the tenant vacated, statements from a carpet clinic, a statement from a real estate agent advising the landlord of the damage after the tenant vacated, and a letter to the tenant, dated January 11, 2010, which among other things, reiterated the landlord's telephone number and address.

In response, the landlord submitted that the rental unit was newly renovated and in pristine condition when the tenant moved in and that the tenant caused excessive damage and disrepair to the rental unit during the tenancy.

The landlord stated that the tenant called him only once regarding a sewer problem and that was in December 2009. Although the landlord denied that the sewer back-up was due to the rental unit's sewer system, he compensated the tenant fully for any costs related to that issue. The landlord submitted that there is no ongoing or annual problem with the sewer, as shown by his current tenant's statement.

The landlord said he spoke to the sewer service company's representative, who informed him the back-up was probably due to over taxation by the tenant.

The landlord stated that the tenant's allegations of conversations with him were fabricated.

The landlord expressed concern that the tenant's brother was making repairs and replacing thermostats as he questioned whether the brother was qualified to do so. Additionally the landlord submitted that the furnace was in good working order at the start of the tenancy, denied that the tenant ever informed him of a furnace problem and that any repair was due to the tenant's damage.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenant to prove damage or loss.

In the circumstances before me, the tenant supplied deficient and inconclusive documentary evidence which I find does not meet the burden of proof necessary for a monetary claim. For instance, the tenant admitted that any claim he had pertained to the spring of 2010, as he had been fully compensated for any issue regarding 2009; yet, with one exception, all pieces of documentary evidence supplied by the tenant were dated in 2009 or before. The exception was an unpaid invoice payable to the tenant's brother. Having said that, the tenant contradicted his own testimony by stating that the sewer back up was in the spring of 2009, yet the evidence produced for any alleged problems were dated for the latter part of 2009.

The tenant admitted that his claim for pain and suffering was based upon his greed and anger at the landlord for his filing an application and further, the tenant provided no credible testimony or evidence that he had to clean the rental unit, which encompasses his claim for \$11,375.00. Rather I find on a balance of probabilities it was the landlord who had to clean and repair the rental unit because the tenant had left the rental unit in a serious state of disrepair.

Due to the above, I find the tenant has provided no evidence or credible testimony to substantiate the merits of his claim; rather the claim and the tenant's supporting testimony gave the appearance that the tenant's application was in retaliation for the landlord's earlier application for dispute resolution. I find that this to be an abuse of process.

#### Conclusion

**I therefore dismiss the tenant's application, in its entirety, 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: July 05, 2011.

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Residential Tenancy Branch