



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, ERP, RP, PSF, RR, FF

### Introduction

This conference call hearing was convened in response 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; and to order the landlord to; comply with the Act, regulation, or tenancy agreement; to make emergency repairs; to make repairs to the unit; to provide services or facilities required by law; to allow a tenant to reduce rent; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Should the landlord be ordered to comply with any of the above noted requests?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on October 7<sup>th</sup>, 2011. The rent of \$750.00 was reduced to \$594.00 per month as a move-in incentive, and the tenant paid a security deposit of \$375.00.

The tenant divided his claim under three major issues: the lack of heat, problem tenants, and misrepresentation of a crime free building.

The tenant stated that the heat hasn't been working properly for about a month and wants to know when the problem will be fixed. He testified however that the maintenance technician has been diligent in his efforts to fix the problem and to assist the tenants.

The tenant stated that there is prostitution and smell of marijuana inside the complex; in addition, there were problem tenants in one of the units that were so disturbing that other occupants could not sleep and police had to be called. He said that they were eventually evicted but the landlord took too long. He said that there is no on-site management and that it is difficult to have the landlord intervene on time. Lastly the tenant said that the landlord's agent misrepresented the building as being crime-free; the tenant said that he checked with the local police who told him that the building was not crime-free, but that the management was working towards that end. The tenant said that he would not have moved-in, had the agent informed him of the ongoing problems.

The landlord's agent testified that concerning the heat, she took immediate action; she contacted plumbers who have attended and are still working in an attempt to permanently fix a problem with air bubbles in the lines. She said that she provided electric heaters in the interim, and that the landlord will reimburse the tenants their hydro bills.

The landlord's agent did not dispute the tenant's testimony concerning the advertising of a crime-free building; however she argued that the management company does have complexes that are crime-free and that she is working in bringing the complex in question to that status. Concerning the problem tenants, she said that she followed the Residential Tenancy Branch process to end their tenancy. She said that she attended that unit several times when other tenants complained about the noise.

The tenant stated that the portable heater was not adequate and that he had to purchase his own unit. The landlord's agent responded that she can provide the tenant with more heaters if necessary.

### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the tenant to prove his claim against the landlord.

There was no documentary evidence before me from the tenant to support his claim concerning repairs. Based on the parties oral testimony I find that the landlord has taken the necessary to fix the problem with the heat. Nevertheless the tenant lost a portion of his right to the full benefit of the tenancy. Problems or emergencies may occur from time to time; they are not necessarily indicative of negligence or inaction on the part of the landlord. Since the landlord's agent cooperated and the maintenance technician is striving to solve the problem, I find insufficient evidence to prove that the landlord did not comply with the Act and I decline to award the tenant compensation for this aspect of the claim.

Concerning the misrepresentation of the complex, I find on the evidence that the landlord was not forthright in informing the tenant concerning the ongoing problems; while I acknowledge the landlord's efforts in making this complex a crime-free building, the agent ought to make the current situation very clear in order to allow the tenants to make an informed decision before signing a tenancy agreement.

Section 28 of the *Residential Tenancy Act* provides in part that a tenant is entitled to quiet enjoyment including, but not limited to; reasonable privacy and freedom from unreasonable disturbance. I am satisfied on the evidence that the tenant was not properly informed concerning ongoing activities in the complex and that the tenant lost some quiet enjoyment. In the circumstances I find that an award of \$200.00 will adequately compensate the tenant for the disruptions.

The landlord continues to monitor the problem with the heat, has evicted problem tenants; therefore I find no compelling reason to issue orders for repairs, or for the landlord to comply with the Act, regulation, or tenancy agreement.

### Conclusion

The tenant established a claim of \$200.00. Since he was partially successful, I grant the tenant partially recovery of the filing for \$25.00 and a claim totalling \$225.00.

I authorize the tenant to deduct \$225.00 from the next month's rent owed to the landlord.

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: January 16, 2012.

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