



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, FF

### Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a Notice to End Tenancy for Unpaid Rent; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to order the landlord to comply with the Act, regulation, or tenancy agreement; 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.

At the outset the tenant's agent confirmed that the tenant moved out after giving the landlord a 1 month notice to end tenancy on January 31<sup>st</sup>, 2012. Accordingly the tenant's application for cancellation of the landlord's notice to end tenancy is dismissed. Since the tenancy ended, I also dismiss the aspect of the application concerning orders for the landlord to comply.

### Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the tenancy was for a fixed term of one year that started on February 1<sup>st</sup>, 2011. The rent was \$700.00 per month including utilities, with an additional \$25.00 per month for cable service. The tenant paid a security deposit of \$350.00 and a \$150.00 deposit for a cable box.

The agent for the landlord testified that problems with the heat started on October 5<sup>th</sup>, 2011. He stated that the landlord discovered that a main switch had to be turned back to the “on” position. The agent however stated that this did not fix the problem, and alleged that the landlord may have been tampering with the switch. He said that the thermostats were always set between 68 and 70 degrees, but that at no time did they come on when the temperature dropped below these margins. He said that the tenant reported the problem on November 1<sup>st</sup>, December 3<sup>rd</sup>, January 5<sup>th</sup>, and February 2<sup>nd</sup>. He said that the landlord did nothing, that the tenant has had no heat for the past 5 months, and that the problem is still not fixed. He stated that the tenant is seeking to recover \$60.00 per month for a claim of \$300.00.

The landlord confirmed that she attended to the problem in October by turning on the main switch, which controls heat for the whole house and therefore cannot be tampered with. She stated that when the tenant complained again on November 1<sup>st</sup>, 2011, she called a plumber who said that the heat was working properly, that he replaced a thermostat, and that the heat was confirmed to be working in the presence of the tenant. She stated that she did not hear any more complaints from the tenant, and that the complaints after November 1<sup>st</sup> did not occur. She said that she has a playroom and a laundry room downstairs that are on the same heating system and that these rooms had sufficient heat. She said that she also observed that some of the tenant's windows were opened in November, and that she always reassured the tenant to let her know of any problems, since this is a new house.

### 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 her claim against the landlord.

Section 7(2) of the *Act* states in part that a party who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. In this case I heard no evidence from the tenant concerning this aspect of her responsibility, other than that she used the oven as a supplementary source of heat. I find that the tenant has not exercised her right to resolve the problem promptly, and that her claim lacks supporting evidence, such as temperature records taken randomly throughout the day or night when the problem continued after October 5<sup>th</sup>. I also note that the tenant did not choose as remedy to seek assistance through dispute resolution to resolve the issue if the landlord failed to fix the problem as alleged. All I am left with is a retro-active claim and contradictory oral testimony.. The tenant has not proven, on a balance of probabilities that the landlord failed to comply with the Act, regulation, or tenancy agreement

### Conclusion

The tenant's application is dismissed.

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 01, 2012.

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Residential Tenancy Branch