



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      RP, OLC, MNDC, FF

### **Introduction**

This hearing dealt with an application by the Tenant for monetary orders for compensation for damage or loss under the Residential Tenancy Act (the “Act”), orders to the Landlords to make repairs to the unit, site, or property, orders to the Landlords to comply with the Act, regulation, or tenancy agreement, and recovery of the filing fee.

The Landlords and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

### **Preliminary Matter(s)**

#### **Landlords’ names**

At the hearing NP attended and testified that she is one of the Landlords of the rental unit which she co-owns with her husband GSP. The Landlords’ representative TM confirmed this information as well. The Tenant confirmed that he is aware that NP is the spouse of the GSP, but he was not sure of the property ownership arrangement. The Tenant had only named GSP on his Application, however, I find that it is appropriate to amend the Application based on NP’s testimony that she is one of the Landlords. As a result, the decision and any orders which result from this hearing refer to NP and GSP as the Landlords.

#### **Oven/Stove Repair**

The parties agree that the issue with the oven/stove in the rental unit has been resolved by the Landlord and is no longer an issue. The Tenant withdrew the issue of the oven/stove repair from his application.

#### **Settlement agreement with orders**

During hearing the parties agreed to settle the Tenant’s issue with regards to mice control and any holes in the rental unit that mice are accessing. Pursuant to section 63 of the Act this issue, raised in the Tenant’s application, is settled on the following conditions:

The Landlord and Tenant agreed to the following orders:

1. I order the Landlord to get the rental unit inspected by a professional pest control company to remove the mice problem from the rental unit and to determine any work that needs to be done immediately.
2. If the pest control professional determines work needs to be done, such as repairs to holes in the rental unit that the mice are accessing or other work related to resolving the mice problem, I order the Landlord to ensure that this work is carried out immediately.

The Tenant has leave to apply for a monetary claim if the Landlord fails to comply with the orders as required.

#### Tenant's CD of evidence

The Tenant submitted a CD into evidence which he states contains a recording of the Landlords and their family members being threatening and verbally abusive towards the Tenant and his family members. The Tenant stated that the CD is not all in English and has not been translated into English. The Tenant did not provide any translated transcript of the CD. I find it appropriate to dismiss the Tenant's request that I hear the CD.

#### Remaining claim issues

The Tenant's remaining issues are:

- \$75.00 as compensation for damage to clothing by mice;
- \$5.00 for purchase of mice trap;
- \$40.00 for purchase of heater as compensation for not having heat in one room of in the rental unit;
- \$175.00 as compensation for not being able to use the Landlord's laundry facilities from December 2011 to date of Application (March 19, 2012);
- order for the Landlord to allow Tenant to access the laundry facilities;
- order for the Landlord to not interfere with the Tenant's peaceful enjoyment of the rental unit.
- order for the Landlord to properly notify the Tenant, before accessing the rental unit, as required by the Act.
- recovery of the \$50.00 filing fee for the Application.

**Issue(s) to be Decided**

Is the Tenant entitled to orders against the Landlord including a monetary order for compensation for damage or loss and the filing fee?

**Background and Evidence**

The parties agree that the tenancy began on July 01, 2011 and that the monthly rent is \$600.00 due on the first of each month. The parties agree that the Tenant paid a security deposit of \$300.00 at the beginning of the tenancy. The parties stated they have a verbal tenancy agreement. The parties confirmed that the rental unit is a basement of a house with the Landlord residing on the main level and the Landlords laundry area is outside the rental unit in the Landlords' personal residence. The parties agree that cable and hydro are included in the rent. The parties disagree over whether the laundry facility is included.

**Compensation due to mice**

The Tenant stated that mice have damaged his family's clothing and other items in the rental unit and he provided photos into evidence. The Tenant stated that he was using a mice trap at his own expense before the Landlord had a pest control company provide poison. The Tenant is stating that the pest control company did not resolve the mice problem at this time and that there are holes in the rental unit the mice are hiding in. The Tenant has claimed \$75.00 as compensation for damage to clothing by mice and \$5.00 for purchase of mice trap. The Tenant stated that he let the Landlords know of his concerns about mice and other issues to do with the rental unit in a letter of February 01, 2012, which he has submitted into evidence.

The Landlords state that they have been trying to resolve the Tenant's issues with the mice and that they were unaware of the holes but they agree to have pest control come back and deal with the mice issues and that the holes can be repaired. The Landlords stated that they disagree that the Tenant is entitled to any monetary compensation. The Landlords stated that the Tenant must ensure the rental unit is kept clean and free of debris that could attract mice.

**Compensation for heater**

The Tenant stated that the Landlords control the heat for the house. The Tenant stated that one of the rooms in the rental unit does not have a heater or heat supplied, so he had to purchase a heater at his own expense. The Tenant has claimed \$40.00 for

purchase of heater as compensation for not having sufficient heat, as there is no heat in one room of in the rental unit. The Tenant stated that he let the Landlords know of his concerns about mice in the rental unit in his letter of February 01, 2012.

The Landlord stated that the Tenant rented the rental unit as is and that it never had any heat in one of the rooms. The Landlord stated that they control the heat and provide it to the whole house including the basement where the Tenant resides. The Landlord disagrees that the Tenant is entitled to any monetary compensation.

#### Compensation for no access to laundry facilities

The Tenant stated that when the tenancy commenced the male Landlord told them they could use the laundry, and they did for a period of time. The Tenant stated that he understood use of the shared laundry to be included in their rent and that the Landlords mother showed the Tenant's wife how to use the facilities in July 2011. The Tenant stated that his wife then travelled out of the country that summer and they did not do laundry again for several months until later in October 2011 when his wife returned from her trip out of the country. The Tenant stated that the female Landlord decided that they should not have access to the laundry any longer telling them that they were using too much electricity and locked the door that had provided them access to the laundry area at the end of November 2011. The Tenant stated that they now go out to a laundromat to do their laundry since December 01, 2011 and it is costing them up to \$20.00 per week to do their laundry. The Tenant is claiming \$50.00 per month up to the date of the hearing, (\$50 x 3.5 months) for a total of \$175.00 in compensation for the loss of the use of the laundry facilities to date and is requesting that the Landlord be ordered to restore their use and access to the laundry facility. The Tenant stated that he let the Landlords know of his concerns about not having access to the laundry facility in his letter of February 01, 2012.

The female Landlord testified that there was never an agreement for the Tenant to use the Landlords' laundry facilities, which is outside the rental unit in the Landlords' personal residence. The female Landlord denies the Tenant's statements and stated that she is not aware of her mother ever showing the Tenant's wife how to use the laundry. The female Landlord stated that they were not aware that the Tenant had been accessing their laundry area, and when they discovered this they locked the door. The female Landlord stated that the Tenant is not entitled to access to the Landlords laundry area as this was not part of the tenancy agreement and that the Tenant is not entitled to compensation for laundry.

#### Lack of peaceful enjoyment and Landlords access to rental unit

The Tenant stated that the female Landlord and her mother have been very verbally abusive toward the Tenant and his family and threatened them as well. The Tenant stated that he has contacted the police about the Landlords. The Tenant stated that the Landlords have screamed and shouted bad words about the Tenant and his family that they can hear through the walls of the rental unit and that the Landlords have been loudly stomping on the floor above their heads late at night while the Tenant and his family are trying to sleep. The Tenant stated that the Landlords have been told that they use too much water and heat and are costing the Landlord too much and should pay more rent or move out. The Tenant stated that they told the Landlord they cannot afford more than the \$600.00 per month in rent. The Tenant stated that he has had to call the police on two occasions about the Landlords as he felt threatened by them. The Tenant stated that the Landlords have accessed the rental unit without notice or permission of the Tenant. The Tenant stated that he cannot lock the door on the inside that separates the laundry area from his rental unit. The Tenant stated that the Landlord has a lock on their side of the door and comes into the rental unit. The Tenant is seeking an order to the Landlords to cease disrupting their peaceful enjoyment of the rental unit and to cease accessing the rental unit without notice in accordance with the Act or the Tenant's permission.

The Landlords stated that the Tenant is disrupting their peaceful enjoyment and they dispute the Tenant's statements. The Landlords stated that they have spoken to the police who inform them that this is a residential tenancy dispute and not a police matter. The Landlord denies accessing the Tenant's rental unit without their knowledge. The Landlords stated that they keep the door locked between their personal residence and the Tenant's rental unit for their own privacy. The Landlords stated that they have issued the Tenant a Notice to vacate the rental unit for Landlords' personal use. A copy of the Notice was not provided into evidence.

The Tenant stated that he has not received any Notice to vacate at this time.

The Tenant has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

### **Analysis**

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

The Act provides a set of rights and responsibilities between landlords and tenants, as does the signed tenancy agreement. The Landlord must not breach the Act or the tenancy agreement.

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

With regards to peaceful enjoyment provisions section 28 of the Act states:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

With regards to entering the rental unit, section 29 of the Act states:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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, the balance of probabilities. To prove a loss and have the Landlord (Respondent) pay for the loss, the Tenant (Applicant) must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and
- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Compensation due to mice

The Tenant has claimed \$75.00 as compensation for damage to clothing by mice and \$5.00 for purchase of mice trap. The Tenant has provided no receipts or proof of the

value of these items into evidence. As a result, I find that the Tenant has not provided sufficient evidence to receive compensation for these items. I dismiss the Tenant's claim for costs related to damage to clothing, and a mice trap.

#### Compensation for heater

The Tenant has claimed \$40.00 for purchase of a heater as compensation for not having heat in one room of in the rental unit. The Tenant has provided no receipts or proof of the value of this item into evidence. As a result, I find that the Tenant has not provided sufficient evidence to receive compensation for this item. I dismiss the Tenant's claim for costs related purchase of a heater.

#### Compensation for no access to laundry facilities

The parties confirmed that the rental unit is a basement of a house with the Landlord residing on the main level and the Landlords laundry area is outside the rental unit in the Landlords' personal residence. The Tenant is requesting that he be allowed to enter the interior of the house and utilize the laundry area. The Tenant has provided insufficient evidence that use of the Landlords' laundry area was part of the verbal tenancy agreement. As a result, I do not find that the Tenant has had a service or facility removed or a material part of the tenancy agreement breached. The Tenant's request to access to the Landlords' laundry area and compensation for no current access to the Landlords' laundry area is dismissed.

#### Lack of peaceful enjoyment and Landlords access to rental unit

At this time I do not find that the Landlords have breached the peaceful enjoyment of the Tenant. The Tenant has provided insufficient evidence to that there have been any incidents or police action. In a rental accommodation of this sort there will be sounds of normal day to day living, and is to be expected due, however, excessive noise or disruption would be considered a lack of peaceful enjoyment. The Tenant has claimed for compensation due to noise or disruption at this time. As the Landlord resides upstairs and the Tenant in the basement, I order both parties to ensure that they and their guests or other occupants do not disrupt each other's peaceful enjoyment, and I order the Landlord to comply with section 28 of the Act.

I accept the party's evidence that the Tenant does not have a lock on the inside of the door of the rental unit that separates the rental unit from the Landlords' area and that the door only locks on the Landlord's side. As a result, I find it appropriate to order the Landlord to be in compliance with section 29 of the Act, before any entry to the rental unit. As the Tenant has no access through the interior door, any notices or written notification for entry to the rental unit provided to the Tenant if posted, must be attached to the exterior door through which the Tenant accesses the rental unit.



As the Tenant has partially succeeded in his Application, I also find that he is entitled to \$50.00 for the filing fee he paid for the Application.

### **Conclusion**

I have dismissed the Tenant's claim for damages or loss under the Act, regulation or tenancy agreement.

The orders to the parties are as follows:

1. I order both parties to ensure that they and their guests or other occupants do not disrupt each other's peaceful enjoyment of the unit, site, or property; and I order the Landlord to comply with section 28 of the Act.
2. I order the Landlord to ensure that they do not enter the rental unit unless it is in accordance with the requirements of section 29 of the Act.

The orders to the Landlord as set out in the settlement agreement pursuant to the Act are as follows:

1. I order the Landlord to get the rental unit inspected by a professional pest control company to remove the mice problem from the rental unit and to determine any work that needs to be done immediately.
2. If the pest control professional determines work needs to be done, such as repairs to holes in the rental unit that the mice are accessing or other work related to resolving the mice problem, I order the Landlord to ensure that this work is carried out immediately

I grant the Tenant leave to apply for a monetary claim if the Landlord fails to comply with the orders as required.

I find that the Tenant is entitled to a monetary order for the filing fee pursuant to section 67 and 72 of the Act in the amount of **\$50.00**.

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: April 16, 2012.

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Residential Tenancy Branch