



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, MNDC

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenants, their advocate and the landlord

At the outset of the hearing I confirmed the landlord had issued to 1 Month Notices to End Tenancy for Cause, one issued on April 18, 2012 and the next issued on April 26, 2012, both with an effective vacancy date of May 31, 2012. The tenants confirmed that they did not dispute the Notice issued on April 26, 2012 and intended to move based on that notice.

As the tenants are moving out of the rental unit on or before May 31, 2012 there would be no effect to cancelling the Notice issued on April 18, 2012, as such the tenants agreed to amend their Application to include only the matter of compensation for damage or loss.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on March 26, 2012 for a 6 month fixed term tenancy for a monthly rent of \$700.00 due at the beginning of each month with a security deposit of \$350.00.

The tenants testified that shortly after they moved in the plumbing was acting up and they called the landlord to have emergency repairs dealt with and that this went on for

about one week at which point the sewage started backing up into the bathtub and filling the bathroom.

The parties agree the landlord put the tenants up in a hotel for few days and since the tenants' return the plumbing has been working fine. The tenants testified the landlord did not inform them that there were any plumbing problems at all in the rental unit.

The landlord testified that the previous tenant had been there for four months and there were no plumbing problems. The landlord testified that he owned the property for 10 to 15 years. When I asked him if there had been any previous plumbing problems at the residential property he stated that there had been none.

The landlord's witness testified that she has lived in the rental unit since July 2011 and that there had been plumbing problems, particularly in the basement unit, ever since she moved in, but that the landlord had made repairs over the course of that time and she could confirm that there were no problems when the most recent previous tenant lived in the basement unit.

After these events a city bylaw inspector attended the rental unit and determined that that while rental units are allowed in this area the local zoning bylaws allow only allow secondary suites if either the suite or the principal dwelling is owner occupied. As the landlord does not reside at this property the landlord issued the second Notice to End Tenancy for Cause, in order to comply with the local bylaws.

The tenants assert that the landlord was aware or should have been aware whether or not the residential property, including both rental unit, complied with all requirements necessary for making the rental units suitable for occupancy by tenants including adherence to all applicable laws and local bylaws,

Further the tenants assert that because the landlord failed to warn them about an existing plumbing problem in combination with the landlord's act of renting the unit despite it not being a suite aligned with local bylaws, when he knew or should have known it was not compliant they should be compensation.

The tenants seek compensation in an amount equivalent to 1 month's rent for the costs associated with moving into the rental unit and all other associated costs with moving and the difficulties emotionally as both tenants are older and have disabilities.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Based on the testimony of both parties I find the landlord took all reasonable steps to repair the plumbing problems within a reasonable time and that the landlord took reasonable steps to accommodate the tenants while the repairs were being made.

While I also accept that there had been a pre-existing plumbing problem I note the tenant's provided no evidence of this pre-existing problem or any attempts the landlord took to fix these problems. However, I find the landlord's witness provided credible testimony that repairs had been made previously and that the most recent previous tenant did not have any plumbing problems.

As such, I accept the landlord would have thought any plumbing problems were repairs and that he would not be anticipating any new or additional problems. As such, I find the tenants failed to establish the landlord should not have rented the unit to them based on any plumbing issues.

However, I accept the tenant's position that the landlord knew or at least should have known the local bylaws governing rental properties prior to entering into any tenancy agreement. As a result of entering this agreement that now is ending due to the bylaw infraction, I find the landlord has failed to comply with Section 32, in particular with the housing standards requirement law for rental units in the community.

I accept that resulting from this non-compliance the tenants incurred costs to move in to the rental unit and will incur costs when they move out of the rental unit. While the tenants have provided no specific evidence of any of the costs I find the tenants have failed to establish the value of this loss.

Residential Tenancy Policy Guideline 16 states: “An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.” I order the tenants are entitled to compensation in the amount equivalent to ½ month’s rent.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$350.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 14, 2012.

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Residential Tenancy Branch