



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RP

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for an order for the landlord to make repairs to the unit, site or property.

The tenant appeared at the in-person hearing and gave affirmed testimony. During the hearing the tenant was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not appear at the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The tenant testified that he attempted to serve the landlord in person on two occasions, and after being unsuccessful, served the landlord via registered mail. The tenant testified that on September 10, 2012, he mailed the Notice and evidence package to the landlord at the landlord's address. A registered mail tracking number was submitted as evidence. Based on the undisputed testimony of the tenant, the registered mail package was returned with a "refused by addressee" stamp. Given the above, I find the landlord was served in accordance with the *Act*. I note that refusal or failure to accept service is not grounds for a Review.

Preliminary Matter

A previous Decision dated August 15, 2012, found that the applicant is a tenant, and the respondent is the landlord under the *Act*. As a result of that issue already being decided upon by a Dispute Resolution Officer on August 15, 2012, I do not have jurisdiction to re-consider that issue. As a result, the applicant remains a tenant, and the respondent remains a landlord for the purposes of this application before me. For ease of reference, the previous Decision file number has been included on the cover page of this Decision.

Issues to be Decided

- Should the tenant be granted a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement?
- Should the landlord be directed to make repairs to the unit, site or property?

Background and Evidence

According to the undisputed testimony of the tenant, a verbal tenancy agreement began on approximately May 15, 2012. Rent in the amount of \$500.00 is due on the first day of each month. The tenant stated that a security deposit was not required or paid at the start of the tenancy. The tenant stated that he is required to pay 1/3 of the utilities after being presented with a utility bill by the landlord. The tenant testified that he has not yet received a utility bill from the landlord since moving into the rental unit.

The tenant has claimed \$1,465.85 consisting of the following:

Partial loss of hydro for 40 days (July 23 – 31, 2012 and August 1-31, 2012 inclusive @ \$16.65 per day	\$666.00
Complete loss of hydro for 9 days (August 28, 2012 to September 5, 2012 inclusive) @ \$25.00 per day	\$225.00
Spoiled items of food due to loss of hydro	\$574.85
TOTAL	\$1,465.85

The tenant provided a detailed breakdown in his evidence of all the food items that spoiled from his freezer being without power. The total amount being claimed for food is \$574.85 and was based on the detailed amounts submitted as evidence. The tenant stated that he obtained the amounts from the labels of the various food items.

The tenant stated that he calculated the partial loss of hydro using what a daily rate for rent would be over the course of the month times the number of days without partial hydro. For the days completely without hydro, the tenant increased the daily amount of his claim to \$25.00 per day.

The tenant testified that hydro service was shut off to the rental unit due to the landlord failing to pay the hydro bills. The tenant described being without a portion by stating that

he was able to use power from a neighboring home by connecting extension cords. The tenant described several occasions where he saw a friend of the landlord disconnect the tenant's power cords which left the tenant completely without power. For nine days, the tenant stated there was no power to the rental unit at all as the cords were removed.

The tenant states that he suffered a loss of heat, lighting, television, radio and the enjoyment of his rental unit when there was no power. The tenant stated that he is being conservative in his estimates for his monetary claim and testified that he is not claiming for costs associated with purchasing extension cords, flashlights, flashlight batteries, and candles that were required when the rental unit was without power.

The tenant is also seeking two repairs from the landlord to the rental unit. The first repair is to a broken stair on the first level of stairs leading up the outside stairs to the rental unit. The second repair is to have the washing machine repaired as it currently backs up into the kitchen sink which is not hygienic and is, therefore, a plumbing issue.

Analysis

Based on the undisputed documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's claim for spoiled food items– Based on the undisputed testimony and documentary evidence of the tenant, I accept that the tenant suffered a loss of food items in the amount of \$574.85. Therefore, **I find** the tenant has established a monetary claim of **\$574.85** comprised of spoiled food items due to loss of power.

Tenant's claim for partial and full loss of hydro – Based on the undisputed testimony of the tenant, I accept that the tenant suffered a loss by being without hydro on a partial basis and without hydro for nine full days. I don't agree with the tenant's calculations, however. Firstly, a tenant cannot be unjustly enriched by submitting a claim for damages or loss under the *Act*. For example, the tenant's claim for being without hydro at all at \$25.00 per day over the course of 31 days would total \$775.00, which is \$275.00 more than the amount of rent which is \$500.00 per month. As a result, I find the only amount to be fair with respect to compensation for the tenant is using a maximum daily rate based on a 31 day month, which applies to the months of July and August in dispute, for a total daily rate of \$16.13.

In addition, I find the tenant made an error with the dates provided in his claim. The dates of August 28 to August 31, 2012 inclusive were included in the tenant's claim for partial hydro and for the complete loss of hydro. As a result, those dates were doubled

in the tenant's calculation. I do not accept the doubling of any dates in my calculations for compensation. I accept that for all dates in question, the maximum daily rate the tenant is entitled to for loss of hydro is \$16.13 in the matter before me.

As a result I find the tenant is entitled to compensation as follows:

Loss of partial hydro for 36 days (July 23 – 31, 2012 and August 1-27, 2012 inclusive @ \$16.13 per day	\$580.68
Loss of complete hydro for 9 days (August 28, 2012 to September 5, 2012 inclusive) @ \$16.13 per day	\$145.17
Subtotal	\$725.85
Spoiled items of food due to loss of hydro	\$574.85
TOTAL	\$1,300.70

As the tenant's application had merit, **I grant** the tenant the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenant has established a total monetary claim of **\$1,350.70** consisting of \$725.85 for partial loss of hydro for 36 days and full loss of hydro for 9 days, \$574.85 for spoiled food items, and \$50.00 for recovery of the filing fee. Therefore, **I grant** the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$1,350.70**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I order the landlord to arrange to have the broken stair repaired by a qualified repair person within 15 days of receiving this Decision, at the expense of the landlord.

I order the landlord to have a licensed repair person inspect the washing machine within 15 days of receiving this Decision, and **I order** that any suggested repairs to the washing machine be completed within 20 days of that inspection date by a licensed repair person, at the expense of the landlord.

If the landlord fails to make the above noted repairs the tenant may apply for further monetary compensation including, but not limited to, an application for a reduction in rent until such time that the repairs have been completed.

Conclusion

I grant the tenant a monetary order under section 67 in the amount of **\$1,350.70**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I order the landlord to arrange to have the broken stair repaired by a qualified repair person within 15 days of receiving this Decision, at the expense of the landlord.

I order the landlord to have a licensed repair person inspect the washing machine within 15 days of receiving this Decision, and **I order** that any suggested repairs to the washing machine be completed within 20 days of that inspection date by a licensed repair person, at the expense of the landlord.

If the landlord fails to make the above noted repairs the tenant may apply for further monetary compensation including, but not limited to, an application for a reduction in rent until such time that the repairs have been completed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 11, 2012

Residential Tenancy Branch