



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

One of the tenants and the landlord attended the reconvened conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this month to month tenancy started on September 01, 2012. Rent for this unit was \$850.00 per month and was due on the 1<sup>st</sup> of each month.

The tenant testifies that the landlord did not provide a rental unit fit for occupation. The stove had no glass front on it and the landlord said this would be replaced but he failed to do so; the washing machine did not work properly and the control knobs were all out of position. When the washing machine was used it would blow the breakers and the landlord gave the tenants an extension cord to run from a kitchen outlet but this fried the extension cord. The tenant agreed the landlord sent a technician to look at the washer but it still did not work correctly. The tenant testifies that there was also a large water bubble under the floor in front of the washer

The tenant testifies that there was a problem with the toilet, the landlord did send a plumber in to fix this but the plumber pulled up the tiles in the bathroom and failed to replace them. The tenant testifies there appeared to be black mould under the tiles. The tenant asked the landlord if they could replace the flooring with linoleum and the landlord agreed but then would not pay for it. The tenant testifies that the bathtub seal also required replacement.

The tenant testifies that they moved into the rental unit in the summer months and did not need to use any heat at that time. Later when it became cooler they realized they had no heat and the thermostat was missing on the wall. This was not replaced and the tenants gave the landlord notice to end the tenancy on October 28, 2012 due to lack of heat and repairs.

The tenant testifies that when they moved into the unit the tenants had to clean the unit and repaint the kitchen. The tenant testifies that the fridge did not freeze food correctly, there were no smoke detectors in the unit; the landlord refused the tenants access to the garbage bins; and there was a hole in the balcony with linoleum covering it.

The tenant testifies that they sent two letters to the landlord concerning these problems one dated September 20, 2012 and the second one dated October 13, 2012. These letters have been provided in evidence by the tenants. The tenants gave the landlord until October 26, 2012 to provide heat to the unit and to do the rest of the repairs by

November 05, 2012. The tenants then gave the landlord written notice to end the tenancy on October 28, 2012 after the landlord failed to make the necessary repairs or provide heat. The tenants seek compensation of \$1,700.00 from the landlord equivalent to two months' rent.

The landlord disputes the tenants' claims. The landlord testifies that his written submissions provided in evidence document what happened at the start of the tenancy and throughout the tenancy. The landlord submits that when the tenants came to view the rental unit they were informed that it was not ready for rental. The landlord submits that the tenants kept asking if they could move in right away and a few weeks before September 01, 2012 the landlord again showed the tenants the unit after he had made some repairs and cleaned the unit. On August 20, 2012 the tenants arrived with a Ministry shelter form and said they would like to rent the unit. The landlord questions the tenants' motives as to why they agreed to move in if the unit was dirty as claimed and repairs had not been done.

The landlord testifies that the unit had been cleaned prior to the tenants moving in and the carpets had been cleaned on July 01, 2012. The landlord has provided a carpet cleaning invoice showing this date. The landlord submits that the tenants asked to repaint the walls a different colour and wanted to do the work themselves. The landlord submits that he agreed the tenant could do this as long as the tenant did a professional job. The landlord testifies that in 2010 the landlord had completed a massive renovation on the rental unit and has provided the invoices for that work in evidence. The landlord agrees he obtained paint for the tenants to use.

The landlord submits that about three weeks after the tenants moved in, the tenant CW informed the landlord that the washer was not working properly. As the washer was only four years old the landlord called the technician who came out that day to look at the washer. The landlord submits that the technician informed the landlord that the washer was working correctly however was not being used properly by the tenant. The landlord submits that the next day the tenant informed the landlord that the washer was working

properly now. The landlord submits that a few weeks later the tenant complained that the washer was tripping the breaker. The landlord sought advice from the washer technician and was informed that the tenant must be overloading the outlets or the washer and advised the landlord to ask the tenants to use a different outlet to see if that resolved the problem. The landlord submits that the tenant tried this and informed the landlord that it was now working properly and the tenant had still used the same outlet. The landlord submits that later the tenant complained that there was water under the washer but the next day told the landlord it was gone.

The landlord submits that on October 25, 2012 the tenant CW informed the landlord that there was no smoke detector in the unit. The landlord submits that there was a smoke detector before the tenants moved in as the landlord had replaced the battery in the detector. The landlord went and bought a new smoke detector on October 25, 2012 and when he went to the unit to fit it no one would answer the door although clearly there was someone at home. The landlord has provided receipts for the original smoke detector and the one purchased on October 25, 2012.

The landlord submits that the tenants were allowed to use the landlord's large garbage dumpster for their everyday garbage as a privilege. The landlord submits that he noticed that CW was putting large items in the dumpster on a regular basis filling the dumpster up. When the landlord challenged CW the landlord submits that CW told the landlord that she was putting large items from her storage unit in the dumpster as CW no longer required them. The landlord informed CW that the dumpster was only for everyday garbage and not large items.

The landlord testifies that the hole in the deck was approximately 2 inches by 3 inches and the landlord was not shown this hole by the tenants and if he had of been he would have repaired it.

The landlord testifies that on October 25, 2012 a person came into the landlord's store located under the rental unit and started to threaten the landlord's employees saying the

landlord has to provide heat to the tenants unit and if this wasn't done this person would call the police and the gas company. The landlord returned to the store and spoke to this person who was the tenants advocate. The landlord testifies that he showed the tenants advocate the tenancy agreement in which it clearly states that the tenants pay the phone, cable, and Hydro and gas bills. On the Ministry shelter form it also shows that utilities are not included in the rent. The landlord has provided copies of these forms in evidence. The landlord submits that he checked with the gas company later that day and determined that the tenants had not set up a gas account for the rental unit in their name. The landlord submits that this was why the tenants had no heat.

The landlord submits that after being in the unit for a few weeks the tenant CW informed the landlord that the toilet was blocked. The landlord went to check the toilet and found many cigarette butts floating in the toilet bowl. The landlord submits that he was shocked by this as a week before he had spoken to CW about throwing cigarette butts into the landlord's parking lot. The landlord submits that he called a plumber who came to look at the toilet and pipes and found the cigarette filters had clogged the toilet. The plumber did have to remove a tile from the floor and the landlord informed the tenant that the landlord would replace the tile the next day. However the tenant asked the landlord if they could put down some linoleum of the tenants choice. The landlord submits that he agreed as long as the tenant incurred all the costs. The landlord submits that a few days later CW came to the landlord and said she had no money for the linoleum so the landlord sent the tenant to a friend who had a flooring shop and the landlord paid for the new linoleum and the glue. The landlord expected the tenant to honour their agreement that the tenant would at least install the linoleum however the tenant did remove the tiles but never fitted the new linoleum. Due to this black mould has started to form on the exposed wooden floor and water has leaked into the landlords store below.

The landlord submits that the tenant CW asked the landlord towards the end of September if the tenant could store a bag of groceries in the landlord's stores freezer because the tenant's freezer was not working. The landlord submits that he allowed the

tenant to do so and gave the tenant a key to an empty unit so the tenant could store food in the fridge there. The landlord called the fridge technician and when the landlord informed the tenant the technician could come out the next day the tenant changed her story and said that the freezer was working and the tenant may have just turned it down. This happened on another occasion and the landlord then inspected the tenant's freezer and found it to be working.

The tenant disputes the landlord's claims and testifies that the landlord agreed to pay for the linoleum after the landlords plumber had pulled up the bathroom floor tiles. The tenant testifies that the landlord was supposed to repair any major things and the only reason the landlord fixed the toilet so quickly was because it was leaking into the landlord's store.

The landlord cross examines the tenant and asks the tenant if the tenant went to the landlords friends flooring store to get the linoleum. The tenant responds that yes she did. The landlord asks the tenant that when the tenant told the landlord about the washer did the technician come out the next day because the tenant did not know how to turn the washer on. The tenant responds yes but the dial was all wrong and the technician had to fiddle with it. The landlord asks the tenant about the water leak by the washer and did the tenant come back the next day and tell the landlord it had dried up. The tenant responds yes because the leak had dried up.

The landlord asks the tenant if the tenant had opened an account with the gas company. The tenant responds no, they thought they had heat and when they saw there was no thermostat they could not get any heat. The landlord asks the tenant about the hole in the balcony. The tenant responds that both tenants had mentioned this to the landlord. The landlord asks the tenant about the freezer. The tenant responds that it only worked on and off and defrosted the tenants food.

The landlord asked the tenant other questions which were not relevant to this hearing. I have considered the questions that were relevant and documented them here.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount for compensation. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Therefore the tenants have the burden of proof and must show that the landlord did not comply with the *Act* with regard to repairs or that the rental unit was rented before it was fit for occupation. The tenant must also show that the repairs as described were in existence during the tenancy. When a tenant's evidence is contradicted by the landlord, the tenant will need to provide additional corroborating evidence to satisfy the burden of proof. In this instance I find it is one person's word against that of the other with regard to the events occurring during the tenancy. The landlord has provided corroborating evidence to show that the tenants were responsibly for heat in the rental unit, that there had been smoke detectors purchased for the unit and that the unit had been renovated

two years prior to this tenancy commencing. The only evidence provided by the tenants is a copy of the tenancy agreement which clearly shows that the tenants are responsible for their own utilities and two letters sent to the landlord concerning the lack of heat and repairs. No other corroborating evidence such as a witness statement or photographs of the alleged repairs has been provided. Therefore, I find the tenants have not met the burden of proof in this matter.

Consequently I must deny the tenants application.

### Conclusion

The tenants' application is dismissed without leave to reapply

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, 2013

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Residential Tenancy Branch



