



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants application to cancel a Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

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

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the tenant withdraws the application to cancel the Notice.

### Issue(s) to be Decided

- Is the tenant 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 June 01, 2012. Rent was \$1,400.00 per month due on the 1<sup>st</sup> of each month. The tenant moved from the unit on March 01, 2013.

The tenant testifies that their unit shared a hot water tank with the unit downstairs. The tenant testifies that due to the downstairs tenants overuse of the hot water there was barely enough for the tenants use throughout the tenancy. The downstairs tenant also had a friend move into the downstairs unit who also used a lot of hot water. The tenant testifies that she e-mailed the landlord about this problem but nothing was done. The tenant therefore seeks compensation from the landlord of \$100.00 per month for the last nine months.

The tenant testifies that three months into the tenancy the tenant found extensive water damage in the shower area. The tiles were coming away from the wall and the tenant assumed here would be black mold behind the tiles as water could get in behind due to the condition of the tiles and grout.

The tenant testifies that she notified the landlord about this issue and the landlord suggested that the tenant and her children went into a hotel for two or three days at the landlords' expense while the landlord got a crew in to repair the tiles in the bathroom. The tenant testifies that she declined the landlords offer as the tenant did not want to leave their belongings in the unit in case there was mould present in the bathroom and the mould spores got into the tenants belongings. The tenant testifies that she suggested to the landlord that she would move out and not pay the last month's rent to cover any moving costs. The tenant testifies that the landlords verbally agreed to this but then served the tenant with a 10 Day Notice to End Tenancy when the tenant did not pay the rent.

The tenant testifies that there were other problems in the unit such as the flush handle on the toilet was missing and the sink did not drain properly. There was no sound proofing between the units and the tenant could hear all the functions performed by the tenant downstairs which limited the privacy between the tenants. The tenant testifies that she moved from the unit and left the unit clean. The tenant testifies that she incurred moving costs of \$650.00 and withheld rent for February, 2013 to cover these costs. The tenant states that the landlords may keep the tenants security deposit to cover the balance of the rent and the tenant will put this in writing to the landlords.

The landlord attending disputes the tenants claims. The landlord agrees that the tenant had mentioned a problem with the hot water but not until January 2013 when the landlord came to pick up the postdated rent cheques. The tenant also mentioned about the noise, a broken drawer front. The landlord testifies that the tenant did not want to stay in the unit and the landlord disputes that he ever agreed that the tenant could withhold rent. The landlord testifies that he had told the tenant that if the tenant found alternative accommodation the tenant just had to give the landlord notice to end the tenancy.

The landlord testifies that he was willing to address all the tenants concerns. The landlord testifies that the tenant had informed the landlord about a problem with the tiles in September, 2012. The landlord agrees he offered to do the work when it was convenient for the tenant and that he would pay to put the tenant and the tenant's children in a hotel while the work was going on. The landlord testifies that the tenant thought this was all just too much and that she would rather find a new place to live.

The landlord testifies that the tenant failed to pay rent for February, 2013 of \$1,400.00. The landlord testifies that he received an e-mail from the tenant saying that the tenant had moving expenses and that the tenant was not going to pay Februarys rent.

The landlord attempts to form a settlement with the tenant and offers the tenant \$200.00 in compensation without prejudice. The tenant refuses this settlement.

The tenant testifies that she had spoken to the landlord sometime last summer about the hot water problem but the landlord did not do anything about it just told the tenant to turn the heat on the water tank up. The tenant testifies she did not want to do this because the tenant has young children and did not want to run the risk of them scalding themselves on the hot water.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenant seeks compensation from the landlord of \$900.00 for being without hot water for nine months of the tenancy. The tenant has provided no evidence to show that the tenant was without hot water or for what period of time this lack of hot water existed for. The tenant must also show what steps the tenant took to mitigate this loss by informing the landlord as soon as the tenant realized there was going to be an issue with hot water. The tenant has testified that she sent the landlord an e-mail to inform the landlord in September, 2012 however has provided no proof of this e-mail. The landlord has testified that the tenant did not inform the landlord until January, 2013. In this matter the burden of proof lies with the person making the claim which in this case is the tenant. As it is one persons word against that of the other then the burden of proof is not met that the tenant suffered a regular loss of hot water or that the tenant had informed the landlord of this issue in September, 2013. Therefore I find the tenants claim for compensation is dismissed.

With regard to the tenants claim that she had to move from the rental unit due to the lack of hot water, the noise from the tenants downstairs, the condition of the tiles in the bathroom and other minor repairs. I find the landlord had offered in September, 2012 to put the tenant and her children into a hotel for two to three days while the work was completed on the bathroom tiles. The tenant refused this offer and chooses to move from the rental unit as soon as the tenant found alternative accommodation. Therefore as it was the tenants choice to move from the rental unit instead of having documenting

the repairs, and informing the landlord in writing of all the issues in the rental unit I find the tenant is not entitled to withhold any rent to cover the tenants moving costs.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenants claim to recover the \$50.00 filing fee for this hearing is therefore dismissed.

### Conclusion

The tenant's application is dismissed in its entirety 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 06, 2013

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Residential Tenancy Branch

