



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR, MNR, MNDC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing more time to make an application to cancel a notice to end tenancy – Section 66;
2. An Order cancelling a notice to end tenancy – Section 46;
3. A monetary Order for the cost of emergency repairs – Section 67;
4. A Monetary Order for compensation for loss - Section 67.
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the hearing, the Parties confirmed that by mutual agreement the tenancy ended and the Tenant moved out on April 30, 2013. The Landlord also paid the Tenant for emergency repairs. The Tenant no longer seeks a cancellation of the notice to end tenancy. The Tenant states that the order for the return of the security deposit was made too early and withdraws this claim. The Tenant states that no filing fee was paid and withdraws this claim.

During the Hearing the Tenant referred to evidence that the Tenant states was mailed to both the landlord and RTB approximately 2 weeks prior to the hearing. This evidence

package contained 12 photos, 2 videos and a 2 page description of the claim and was not received by the Landlord or the Residential Tenancy Branch. The Tenant declined an adjournment to provide this evidence and wishes to proceed without any consideration of the Tenant's evidence that is contained in this package.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on February 1, 2013 and ended on April 30, 2013. Rent of \$900.00 was payable monthly and at the outset of the tenancy the Landlord collected \$450.00 as a security deposit and \$450.00 as a pet deposit.

The Tenant states that from the onset of the tenancy the washing machine worked sporadically and finally stopped altogether by mid March 2013. The Tenant states that as a result the Tenants would have to sporadically wash their laundry at their family's house. The Tenant states that the Landlord was informed and looked at the machine but made no repairs. The Landlord states that they were not informed about the washing machine until they received the Tenant's application and that they immediately repaired the washing machine.

The Tenant states that from the onset of the tenancy the dryer only worked on one setting, hot, and then completely stopped working by the first week in April 2013. The Tenant states that the Landlord was informed, looked at the machine but made no repairs. The Landlord states that they were not informed about the washing machine until they received the Tenant's application and that since the tenancy was to end in two weeks they did not repair the machine.

The Tenant states that throughout the tenancy smelly ground water comes up to the surface of their driveway whenever it rained causing the surface to be slippery and that on one occasion, the Tenant's girlfriend slipped on the slime and broke her nose

requiring treatment at the hospital that included stitches. The Tenant states that the Landlord was informed of the dangers and that the Landlord came and looked at the slime but thought it was okay. The Landlord states that at the outset of the tenancy gravel had been placed on the driveway in the area where the groundwater came up. The Landlord states that this is not sewage. The Landlord states that they were not informed of any problems with the groundwater until they received the Tenant's application.

The Tenant states that the central heating furnace had no filter or cover and was covered with rat droppings. The Tenant states that they asked the Landlord to clean and replace the filter but that this was not done. The Tenant states that they believe this to be unsafe and unsanitary and that during the tenancy they were sick and that their allergies increased. The Tenant states that none of the occupants of the unit saw a doctor about the allergies. The Landlord states that the furnace has an electric filter that does not require replacement and that the filter was cleaned a month prior to the start of the tenancy.

The Parties agree that the dishwasher in the unit did not work throughout the tenancy and that this was never repaired.

The Tenant states that when they were signing the tenancy agreement they were told by the Landlord that the tenants who were expected to move into the upper unit would have no dog but these tenants moved in with a large dog. The Tenant states that the Landlord, who lives on the same land, has a dog and the Tenant has a cat. The Tenant states that his girlfriend has allergies to dogs but not cats and that the presence of the other tenant's dog in the house significantly increased the girlfriend's allergies. The Tenant states that the Landlord's dog and the upper tenant's dog would often get into the garbage and that the Tenant would on occasion clean the mess up. The Landlord denies that the Tenant was told that the new tenants would not have a dog. The Landlord states that he is always supportive of pets and that the Tenant was aware of this.

The Tenant states that they had no control over the heat and that the Landlord only provided them with a small space heater.

The Tenant states that the hot water tank for the house was insufficient to provide hot water to both the Tenant's unit of three occupants and the upper tenant's unit with several occupants and that they would intermittently be out of hot water. The Landlord states that the hot water tank has a 37.5 gallon capacity and should be more than sufficient to provide hot water to both units. The Landlord states further that the upper tenants were only there for 1.5 months out of the Tenant's three months tenancy.

The Tenant states that the tub and shower area was not sealed and that there was a concern about the growth of mold. The Landlord states that the tub and shower area was sealed and caulked and that it had been renovated just before the Tenants moved in.

The Tenant states that there were rats in the unit from the onset of the tenancy and that after much complaining and following the Tenant's purchase of rat traps, which the Landlord reimbursed, the Landlord tried rat poison and finally during the last month of the tenancy worked with the Tenant to cover holes on the building. The Landlord states that as the unit is in a country environment, rats are to be expected.

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Considering the Landlord's evidence in relation to the size of the hot water heater, the number of persons sharing the heater and that the upper tenants were present for 1.5 months, I find on a balance of probabilities that the Tenant has

established that they were intermittently out of hot water for 1.5 months and that the Landlord knew or ought to have known that the Tenant would suffer an intermittent loss of hot water. Further and based on the undisputed evidence that the Tenant was without the use of a dryer for approximately two weeks and a dishwasher for three months, I find that the Tenant has established a loss of services and facilities under the tenancy agreement. Based on the undisputed evidence that rats were in the unit from the onset of the tenancy and finding that the Landlord knew about this but did not act reasonably for two months, I find that the Tenant has substantiated a further loss.

I do not find that the Tenant has established the remaining losses claimed. Considering the expected usage of a dishwasher, a dryer and hot water, the disturbance by the presence of rats and the amount of time that the Tenant spent without such usage or disturbance, I find that the Tenant is entitled to reasonable compensation of **\$450.00**. I calculate to this amount as follows, considering the total amount of rent paid:

- dryer:  $\$50.00 \times 5 \text{ months} = \$25.00$ ;
- dishwasher:  $\$50.00 \times 3 \text{ months} = 150.00$ ;
- hot water:  $\$50.00 \times 1.5 \text{ months} = 75.00$ ; and
- rats:  $\$100.00 \times 2 \text{ months} = 200.00$ .

I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$450.00**.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$450.00**. If necessary, this order may be filed in the Small Claims Court and 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 03, 2013

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Residential Tenancy Branch