



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, ERP, RP, PSF, RR, O, OPC, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The female landlord applied for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for the following against both of the landlords (as identified above):

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs and emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlords to provide services or facilities required by law pursuant to section 65; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that he was handed the landlords' 1 Month Notice on March 27, 2013. The female landlord (the landlord) confirmed that both she and the male landlord received copies of the tenant's dispute resolution hearing package sent by the tenant and his agent on April 18 or 19, 2013. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord's agent by registered mail on April 18, 2013. I am satisfied that the above documents were served to one another in accordance with the *Act*.

The landlord testified that she received a copy of the tenant's initial written evidence package but had not received a copy of the tenant's second and more extensive written evidence package that the tenant's agent said he sent by registered mail on May 9, 2013. The tenant's agent gave sworn testimony that this package had been successfully delivered and provided the Canada Post Tracking Number to confirm this mailing and delivery.

After checking Canada Post's On-Line Tracking System, I confirmed that the tenant's second written evidence package was sent on May 9, 2013, as claimed by the tenant's agent and was successfully delivered. In accordance with sections 88 and 90 of the *Act*, I find that the landlords were deemed served with the tenant's second written evidence package on May 14, 2013, the fifth day after its registered mailing. I have given consideration to this evidence in reaching my decision.

Both parties testified that this tenancy has ended. The tenant returned his keys to the landlord's mailbox on April 20, 2013. The landlord testified that she took possession of the rental unit by the end of April 2013. As this tenancy has ended, the landlord withdrew her application for dispute resolution, including her request for an Order of Possession based on the 1 Month Notice. The landlord's application is withdrawn.

As this tenancy has ended the tenant and his agent withdrew:

- the tenant's application to cancel the landlords' 1 Month Notice;
- the request for an Order requiring the landlords to comply with the *Act*;
- the requests for repairs and emergency repairs; and
- the request for an Order requiring the landlords to provide services and facilities agreed upon but not provided during the course of this tenancy.

All of the above portions of the tenant's application are withdrawn.

#### Issues(s) to be Decided

The only remaining issues in dispute are the tenant's applications for the following:

Is the tenant entitled to a monetary award for losses in the value of his tenancy and for quiet enjoyment arising out of this tenancy?

#### Background and Evidence

This periodic tenancy commenced on or about May 1, 1999. The landlord testified that she and the male landlord purchased this seven-unit rental property approximately 6 ½ years ago. She testified that the tenant's rental unit was renovated three years ago. Monthly rent by the end of this tenancy was set at \$565.00, payable in advance by the

first of each month. The landlords continue to hold the tenant's \$262.50 security deposit paid on or about May 1, 1999.

The tenant's agent was his brother-in-law. He entered sworn oral testimony and written evidence that neither he nor his wife were aware of the poor state of the tenant's living conditions until very recently. He testified that there is stench coming from the mould in this rental unit that was so pronounced that many of the tenant's belongings had to be discarded. He said that staff hired to move these possessions would not touch them due to the extreme level of mould. The tenant and his agent also entered oral, written and photographic evidence that a poorly conducted renovation by the landlords about three years ago had led to a series of significant openings being created in the siding and in various locations in this rental unit. The tenant's agent identified a minimum of six separate access points where rodents have been entering this rental unit. The tenant's agent asserted that the rodents have bitten through wiring that connected the electric baseboard heaters for this rental unit. He maintained that the tenant has been without any source of heat in this rental unit for over two years. The tenant testified that he spoke to the male landlord a number of times about the problems he was encountering and each time the male landlord assured him that he would repair the premises. He said that that these repairs were never undertaken.

The tenant and his agent applied for a monetary order of \$15,000.00, which they calculated as follows in their May 7, 2013 Monetary Order Worksheet:

<b>Item</b>	<b>Amount</b>
Rebate of 24 Months Rent @ \$565.00 per month = \$13,560.00	\$13,560.00
Return of Security Deposit	262.50
Estimated Replacement of Personal Effects, Clothing, Cooking Supplies and Utensils and Furniture	1,250.00
<b>Total Monetary Order</b>	<b>\$15,072.50</b>

The landlord testified that she and the male landlord had tried many times to assist the tenant with his hoarding behaviours to little avail. Until they received the tenant's application for dispute resolution, they were unaware that the tenant had any close relatives who would be able to assist him. She testified that every five or six weeks she or the male landlord would bring in a truck and help him remove items he had collected from his balcony and carport. She said that she has received ongoing complaints from the other tenants about the hoarding behaviours that may be a source of the rodent problems the tenant has reported. She said that she has lost tenants because of the

tenant's hoarding behaviours. She said that the tenant also adopted the practice of hammering on walls to scare the mice to enter other rental units in this property. She said that none of their other tenants have complained about a lack of heat in this rental property. She questioned whether the tenant could truly have been living without heat for the time period he claimed. Although she had not entered his rental unit while he remained there, she kept reminding him that he should keep boxes and other materials off of his stove as this constituted a significant fire hazard. Her observations about his hoarding behaviours was limited to the items he routinely placed on his balcony and in the carport, as well as what she could view from his doorway. She said that she could see inside his apartment that the place was "full of stuff piled on top of everything, including the stove." She said that the rental unit was spotless three years ago when the renovations were completed. She testified that the landlords had not heard anything about any of the issues raised in the tenant's application until the landlords handed the tenant the 1 Month Notice.

As the tenant's agent's account of this tenancy was limited to the most recent segment of this tenancy, I asked the tenant for his observations regarding the landlord's claim that he kept an inordinate amount of material in his premises. He described his rental unit as having "slightly more than the regular stuff" that most people would keep in a rental unit of this size. He did acknowledge that the landlord had helped him remove items from his balcony once. He also said that the boxes in his place were not so extreme as to prevent him from getting in or out of his doorway.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 28 of the *Act* establishes a tenant's right to quiet enjoyment of the rental premises. These include but are not limited to the right to reasonable privacy and to freedom from unreasonable disturbance. As outlined below, section 32 of the *Act* places obligations on both the landlord and the tenant to repair and maintain rental premises:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access...*

As I noted at the hearing, I was somewhat surprised that the landlords would not have entered written or photographic evidence to support the landlord's sworn testimony, given the size of the tenant's claim. The landlord testified that the tenant's hoarding extended to his rental unit and was a source of ongoing problems in this rental property, leading some of her tenants to end their tenancies. Most of the landlord's claims could have been readily supported by photographic or written evidence, or by direct sworn testimony from others familiar with this tenancy and the tenant's behaviours. However, for whatever reason, the landlord did not present anything other than her own sworn testimony to oppose the tenant's claim. The landlord's sole piece of written evidence was a copy of the landlord's Canada Post Tracking Number to confirm the registered mailing of the landlord's dispute resolution hearing package. She did not speak directly to the tenant's claims that holes in the building, well-documented in the tenant's photographic evidence, had led to rodent infestations. She did not provide records of pest control actions she and the other landlord had undertaken. Although she said that she was concerned about the tenant's housekeeping and knew that he had too many boxes stored in his rental unit, these concerns do not seem to have been so significant as to have prompted her to initiate her right as a landlord to conduct periodic inspections of the interior of his rental unit.

In one of his written submissions, the tenant's agent described the tenant as a 61-year old male who has always been on a disability and who has been "a fiercely independent person not depending on others." While sympathetic to the circumstances of the tenant in this tenancy as described by the tenant's agent, I am mindful that these are conditions with which the tenant's agent was not at all familiar until the last month of this tenancy. Other than his sworn testimony, the tenant could not point to letters sent to the landlord about the conditions he was facing in this rental unit or the dates of specific requests for repairs. When questioned about the extent of the material in his former

rental unit, the tenant did not deny that there was a lot of material in his rental unit, but observed that he could still enter and exit through doorways. I did not find this testimony provided a particularly strong denial of the landlord's claim that his hoarding behaviours exhibited on the outside of his rental unit extended inside his suite.

The *Act* is not designed to enable a tenant to wait until a landlord ends a tenancy for cause before the tenant raises a host of issues that form the basis for a retroactive monetary claim against the landlord. In this case, the Monetary Order Worksheet prepared apparently by the tenant's agent has submitted a claim for the return of all rent paid by the tenant for the two years prior to the end of this tenancy.

It is admittedly difficult to weigh evidence with respect to claims of this nature when the parties rely on their sworn testimony as a significant basis for their positions. While the tenant's agent has submitted significantly more written and photographic evidence in this regard, I still find that much of the tenant's application rests on the tenant's account of whether he notified the landlords of his complaints about this tenancy and whether his own housekeeping practices led to or contributed to these problems. However, there is also photographic evidence of faulty and incomplete efforts to close off the access points to the rental unit, which no doubt has played a significant factor in allowing rodents to enter this rental property. I find little evidence before me that the landlord has been conscientious in protecting the rental property from the incursion of rodents. A simple walk around the perimeter of the rental unit would have revealed openings that would allow rodents entry to this seven-unit rental property. The landlords' failure to schedule regular inspections of this rental unit where she had concerns about hoarding and the connection between this hoarding and rodent infestations in this building also lead me to accept the tenant's claim that the landlord bears some responsibility in the conditions he faced during this tenancy. I also accept on a balance of probabilities that the tenant likely also bears an element of responsibility for contributing to the rodent infestation and perhaps the mould problems, and has not demonstrated that he properly alerted the landlords to the multiple problems he was experiencing with his tenancy until the landlords issued the 1 Month Notice.

For the above reasons, I find that the tenant is entitled to a limited retroactive monetary award for the loss in value of his tenancy arising out of the landlords' failure to provide the services and facilities he reasonably expected to receive when this tenancy began and for his loss of quiet enjoyment arising out of the landlords' failure to properly maintain the rental premises. While I find that there has been some loss in value in this tenancy, I reject the claim submitted by the tenant and his agent that this loss in value was so extensive as to qualify the tenant for a full rebate of his rent for the two years prior to the end of his tenancy. I find that such an award would be totally out of

proportion with the extent of the losses demonstrated by the tenant and his agent in their evidence. As I accept that the conditions identified by the tenant have likely persisted since at least the onset of the colder months in 2012, I issue a monetary award of \$141.25, representing 25% of his monthly rent, for the last six months of this tenancy. This compensates the tenant a total of \$847.50 (i.e.,  $\$141.25 \times 6 = \$847.50$ ) for the loss in value of his tenancy for the period from November 1, 2012 until the end of his tenancy on April 30, 2013. I dismiss the remainder of the tenant's claim for a monetary award for the rebate of his rent without leave to reapply as I am not satisfied that the tenant has demonstrated that the conditions extended beyond the last six months of his tenancy.

Although I have considered making at least a nominal award for personal effects damaged during this tenancy, I find that the tenant as the claimant has not provided adequate evidence to verify any actual losses in this regard. The tenant has not supplied receipts for the replacement of goods damaged during this tenancy. There is also no certainty that the goods damaged were of value. I also find it likely that the tenant's own housekeeping practices were at least partially responsible for the damage claimed. Under these circumstances, I am unwilling to issue even a nominal monetary award in this regard. I dismiss the tenant's application for a monetary award for damage to his personal belongings without leave to reapply.

Although this tenancy has ended and the tenant included a request to return his security deposit in the Monetary Order Worksheet, the tenant did not include this request in his application for dispute resolution. I make no order with respect to the return of the tenant's security deposit as this issue is not before me. Both parties remain at liberty to apply for the tenant's security deposit and are subject to the time frames as set out in the *Act* with respect to the return of that deposit.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$847.50, an amount designed to compensate the tenant for the loss in value of his tenancy and his loss of quiet enjoyment during this tenancy. The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the tenant's monetary claim without leave to reapply.

The landlord's application is withdrawn as are all the remaining portions of the tenant's application for dispute resolution.

Both parties remain at liberty to apply for authorization to obtain (in the case of the tenant) or retain (in the case of the landlords) the tenant's security deposit.

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 21, 2013

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Residential Tenancy Branch



