



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RP, CNC, MT

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice") and an order requiring the landlord to make repairs.

The tenant and her legal advocate appeared; the landlord did not appear.

The tenant testified that she served the landlord with her Application for Dispute Resolution and Notice of Hearing by registered mail on May 29, 2013. The tenant supplied testimony of the tracking number of the registered mail and additionally stated that the landlord, for some unknown reason, returned the registered mail envelope containing the hearing package by hand delivery to her residence.

I find the landlord was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant and her legal advocate were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-The tenant stated that she amended her application for dispute resolution, to include a request for a monetary order for money owed or compensation for damage or loss and served this amendment along with her documentary evidence to the landlord on June 14, 2013, via registered mail. The tenant supplied the tracking

number for the registered mail. As the landlord failed to attend to raise and objection to the amendment, I have amended the tenant's application to include the request for monetary compensation.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs, a monetary order, and to an order cancelling the 1 Month Notice?

Background and Evidence

The undisputed evidence shows that this tenancy began on April 1, 2013, that the tenant's monthly rent is \$1300, and that she paid a security deposit of \$600 at the beginning of the tenancy. The rental unit is in the upper suite and the landlord rents the lower suite to another tenant.

The tenant said that the landlord had not prepared a written tenancy agreement.

The tenant's relevant documentary evidence included copies of receipts for rent payments and the security deposit payment, a copy of a receipt for a toilet purchase, and a copy of the 1 Month Notice.

As to the tenant's request to cancel the 1 Month Notice to End Tenancy for Cause, the Notice was dated May 14, 2013 and listed an effective move out date of May 31, 2013.

There was no evidence from the landlord as to when the Notice was issued to the tenant.

The causes listed on the Notice alleged that the tenant is repeatedly late in paying rent, has allowed an unreasonable number of occupants in the rental unit, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, has engaged in illegal activity that has or is likely to damage the landlord's property, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and knowingly gave false information to a prospective tenant or purchaser of the rental unit.

The tenant disputes the reasons noted on the 1 Month Notice to End Tenancy and requested that the tenancy continue.

As to the tenant's request for monetary compensation, the tenant testified that one Sunday, her toilet suddenly stopped working as it would not flush. According to the tenant, she and a friend tried to use a plunger and other methods, but the toilet would still not flush.

The tenant stated that she called the landlord that day, and in turn the landlord said that it would be too expensive to call a plumber on a Sunday and that she may call one the next day or the day after.

The tenant submitted that the non-flushing toilet became a health hazard. The tenant also stated that her friend, after not being able to fix the toilet, said that the toilet itself was not working, prompting the tenant to purchase a toilet herself as she could not wait 2 days or more. The friend installed the toilet as a favour and it has been working ever since. The receipt shows that the tenant paid \$114.20 for the toilet and that it was purchased on a Sunday.

As to the tenant's request for an order for repairs, the tenant submitted that laundry facilities were included as part of her tenancy agreement, which is shared with the lower tenant, and that since the tenancy began, the washing machine has not worked. Despite her requests, the landlord has refused to make the repairs, requiring the tenant to travel to a Laundromat at least once a week since the tenancy began to wash her clothes.

Due to these circumstances, the tenant is seeking an order that the washing machine be repaired, as it was agreed upon in her tenancy agreement.

As to the tenant's request for monetary compensation the tenant has claimed \$268.20, for cost of the toilet replacement and \$154, comprised of \$22 each weekend for the 7 weekends of the tenancy. The tenant submitted that she did not have receipts to prove her monetary claim as it was a coin laundry that she used.

The landlord provided no evidence for this proceeding and did not appear.

### Analysis

Pursuant to section 66 of the *Act* I grant the tenant additional time to dispute the 1 Month Notice to End Tenancy for Cause. As the landlord failed to appear to state when the Notice was issued to the tenant, on this occasion I find it is reasonable to extend the deadline the tenant was given to dispute the Notice.

The landlord had the burden of proving that the 1 Month Notice to End Tenancy for Cause had merit. In the absence of any evidence from the landlord to support the grounds listed in the notice to end tenancy, I find that it must be set aside.

The tenant's application is granted and the 1 Month Notice to End Tenancy for Cause dated May 14, 2013, is cancelled and is of no effect or force.

As to the issue of ordering the landlord to make repairs to the rental unit, Section 32 of the *Act* requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In the case before, I cannot determine that the washing machine being broken would make the rental unit unsuitable for occupation by the tenant. I, however, find that the use of laundry facilities is a material term of the tenancy agreement, which I find the landlord agreed to provide as part of monthly rent.

Section 27(1) of the *Act* states that a landlord must not terminate a service if the service is essential to the tenant's use of the rental unit as a living accommodation or providing the service is a material term of the tenancy agreement.

I find the tenant met her burden of proof and submitted sufficient, undisputed evidence to prove that the landlord has not provided an agreed upon service by his refusal to repair the washing machine.

I therefore order the landlord to repair or provide the agreed upon laundry facility, effective immediately, by repairing or replacing the washing machine, pursuant to section 62 of the *Act*.

As the tenant has been deprived of laundry facilities since the tenancy began, I find the tenant was required to pay for the use of an off premises laundry. I find a reasonable amount of compensation for the use of the off premises laundry facility to be \$75 per month and I therefore find that the tenant has established a monetary claim in the amount of \$225, comprised of \$75 each for April, May and June 2013. The tenant is directed to deduct \$225 from her next or a future month's rent in satisfaction of the monetary award.

Until the washing machine has been replaced or repaired, I grant the tenant a continuing rent abatement of \$75 per month and I further authorize the tenant to reduce

future monthly rent payable by \$75 until such time as the washing machine is repaired or replaced, all pursuant to section 62 of the Act.

Upon the washing machine being replaced or repaired, the tenant will be obligated to resume payment of the full monthly rent starting the month following such repair or replacement. Example: if the landlord has the washing machine repaired or replaced on July 5, 2013, the tenant's rent for July is reduced by \$75, but the tenant would have to pay the full amount of rent payable for August 2013.

If the tenant is not satisfied with the repair or replacement and continues to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that it has complied with this Decision.

As to the issue of the toilet Section 33 of the *Act* requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made for the purpose of repairing the following: major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit or the electrical system.

I find the non-flushing toilet to be an emergency repair.

I accept the tenant's undisputed evidence that she contacted the landlord and the landlord refused to attend to the emergency repair until convenient or more affordable to the landlord. I find the landlord's refusal to attend to the emergency repair immediately exempts the tenant from section 33(3) of the *Act*, which requires that tenant to make at least two attempts to contact the landlord and allow the landlord a reasonable time to attend to the emergency repair.

Further the tenant was required to submit a claim for reimbursement to the landlord, with accountings or receipts. Although there was no evidence that the tenant submitted a bill to the landlord directly after the incurrence of such expense, I find that the tenant has submitted a claim for reimbursement through her application for dispute resolution and there was no evidence that the landlord has reimbursed the tenant for the costs of the toilet replacement.

Due to the above, I find the tenant was compelled to take over the emergency repair due to the landlord's refusal to timely attend to the repair, and I therefore find the tenant is entitled to reimbursement for the costs of replacing the toilet in the amount of \$114.20, as shown by the tenant's receipt evidence.

The tenant is directed to deduct the amount of \$114.20 from her next or a future month's rent payment in satisfaction of this monetary award.

Conclusion

The tenant's application is granted and the 1 Month Notice to End Tenancy for Cause dated May 14, 2013, is cancelled and is of no effect or force. The tenancy continues until it may otherwise end under the Act.

The landlord is ordered to repair or replace the washing machine in the rental unit, which I have found to be a material term of the tenancy agreement.

The tenant is granted a monetary award of \$225 for loss of the washing machine since the tenancy began, which she is directed to deduct from her next or a future month's rent payment in satisfaction.

The tenant is granted a continuing rent abatement of \$75 per month until the washing machine is repaired or replaced.

The tenant is directed to deduct \$114.20 from her next or a future month's rent payment in satisfaction of her monetary award for reimbursement of the toilet replacement.

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: June 24, 2013

---

Residential Tenancy Branch