



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 8, 2013, by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenants testified that the Landlord was served with copies of their application for dispute resolution, Notice of dispute resolution hearing, and their initial package of evidence, on July 8, 2013, by registered mail. Canada Post tracking information was provided in the Tenants' testimony. The Landlord was sent a second registered mail package on September 16, 2013, which included their final hydro bill. Based on the submissions of the Tenants I find the Landlord is deemed served notice of this proceeding on July 13, 2013, five days after it was mailed, in accordance with section 90 of the Act, and I proceeded in the Landlord's absence.

### Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order?

### Background and Evidence

The parties entered into a verbal month to month tenancy that began on September 1, 2012 and ended in June 2013. Rent was originally payable on the first of each month in the amount of \$700.00 however rent was reduced to \$600.00 effective April 1, 2013 based on a mutual agreement and repair orders which were not completed by previous set deadlines.

The Tenants testified that they ended their tenancy effective June 30, 2013 as they felt the Landlords were not going to uphold their previous settlement agreement that resulted from attendance at a dispute resolution hearing on January 17, 2013. They

clarified that the matter being heard in this proceeding dealt with the excessive electricity costs they had to pay as a result of a broken hot water tank, which was not part of the previous dispute.

The Tenants stated that their request for compensation for hydro costs in the previous hearing related to the Landlord running a sump pump in the basement and not the extra hydro which resulted from a broken hot water tank.

The Tenants submitted that, prior to the start of the tenancy the Landlord informed them that there was water leaking from the hot water tank, which the Landlord was supposed to have repaired before they moved in. From the onset of the tenancy the basement was flooded, waist high with water, so the Tenants never went in the basement to assess the water leaking from the hot water tank. The Landlord did not install the sump pump until sometime in November 2012; however, the winter rains kept a steady stream of water in the basement which prevented their access. It was not until April or May when the Tenants were first able to get into the basement and assess the hot water tank. By this point the Landlord had already been ordered to complete repairs relating to drainage issues which were not specific to the hot water tank. The Landlord kept putting off the hot water tank issue.

The Tenants pointed to their evidence which included hydro meter readings which prove that the hot water tank was using in excess of 50 kwh of power per day, which caused their hydro usage to go from being low to excessive. Once they assessed the hot water tank they realized that the leak was so substantial that it was completely draining the tank within an hour. This caused the heater in the hot water tank to be running continuously which increased their hydro bill. As a result, they are seeking to compensation of \$1,300.00 which they believe is the additional cost incurred in running the broken hot water tank.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and

4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenants and corroborated by their evidence.

Section 32 of the Act stipulates a landlord and tenant's obligations to repair and maintain the rental property as follows:

- 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.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In this case, I accept the undisputed evidence that the Landlord breached section 32 of the Act by failing to repair the hot water tank. I further find that this breach caused the Tenants to suffer a loss of \$1,300.00 for excessive hydro costs. Accordingly, I award the Tenants compensation in the amount of **\$1,300.00**, pursuant to section 67 of the Act.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$1,300.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia 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: October 02, 2013

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Residential Tenancy Branch

