



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, DRI, MNDC, MNSD, MT

### Introduction

This was an application by the tenant seeking to cancel a One-Month Notice to End Tenancy for Cause, to dispute an additional rent increase, to seek a refund of the tenant's security deposit, and to allow the tenant more time to dispute the Notice.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

At the outset of the hearing, the parties advised that the tenancy ended because the tenant moved out at the end of August 2013. Therefore the request to cancel the One Month Notice to End Tenancy for Cause, the request for more time to dispute the Notice and the dispute over an illegal rent increase, are all moot and need not be considered.

The hearing therefore only proceeded with respect to the tenant's monetary claims.

### **Preliminary Matter - Amend Application**

The tenant's original claim was for a retroactive rent abatement of \$350.00 for loss of use of a washer that was part of the tenancy and compensation for loss of enjoyment due to a three-week-long problem with the hydro.

However, the tenant requested that the original application be amended to include additional monetary claims. Because the tenancy ended, the tenant is now seeking \$200.00 reimbursement for moving costs for a wrongful eviction, \$600.00 for property damage from a rodent infestation that was unaddressed by the landlord during the tenancy, and a refund of their security deposit. The

above new claims are in addition to the original \$350.00 claim for a rent abatement for loss of services.

According to the tenant, they sent the amended application to the landlord prior to the hearing, by registered mail. The tenant was able to provide a tracking number from Canada Post showing that registered mail was sent to the landlord on August 11, 2013.

However, I find that the mail package purporting to amend the tenant's monetary claim after the tenancy ended was dated August 31, 2013. Therefore I find that the registered mail tracking number provided to prove service to the landlord on August 11, 2013, could not possibly have been the amended claim documents. Accordingly, I find that the tenant was not able to sufficiently prove that the landlord had been properly served with the amended claim amount.

Rule 2.5 of the *Residential Tenancy Rules of Procedure* does permit an applicant to amend their application, but imposes the following criteria:

- The applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application on the respondent.
- If all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.
- The application will not be amended where it would result in prejudice to the other party. If it is allowed, the arbitrator may adjourn the hearing to allow the respondent time to respond to the amended application.

The landlord stated that they disagreed with the tenant's intention to amend the application or more monetary claims. I find that amending this application would be contrary to the principle of natural justice because it would prejudice the respondent who had no advance notice of the additional monetary claims. Given the above, I find that I am not able to hear, nor consider, the tenant's claim for additional damages beyond the \$350.00 indicated in the original application.

I make no findings on the tenant's additional monetary claims and the tenant is at liberty to pursue such claims in a separate application.

### **Preliminary Matter Landlord's Claim for Damages**

In the landlord's evidence submission and during the hearing, the landlord attempted to present evidence of damages and losses that were incurred by the landlord during the tenancy.

With respect to the landlord's own claim of damages and claims for rent owed, I am not able to hear, nor consider, a monetary claim by the landlord during these proceedings as the matter before me was convened to deal only with the *tenant's* application under the Act, and was not an application filed by the landlord. No cross application was ever filed by the landlord.

That being said, I must point out that the landlord is at liberty to make their own application if the landlord wants to pursue their claim for compensation for damages and loss pursuant to section 67 of the Act. In the matter before me, however, I find that I can only consider the applicant tenant's claims.

### **Issues(s) to be Decided**

Is the tenant entitled to the return of their security deposit?

### **Background and Evidence**

The tenancy began in April 2012 with rent set at \$700.00 and the tenant paid a security deposit of \$350.00.

The tenant testified that the landlord deprived the tenant of power during the tenancy and removed a washing machine that was included in the rent. The tenant testified that, these reduced amenities devalued the tenancy and the tenant is claiming \$350.00 reimbursement, which represents 50% of the rent for one month.

The landlord disputed the tenant's allegations and stated that the washer was not part of the tenancy. The landlord also disagreed with the tenant's claim that they were deprived of hydro service for 3 weeks.

### **Analysis**

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are also enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) of the Act.

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

Section 13 of the Act requires that a landlord prepare in writing every tenancy agreement entered into and within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement. The Act also specifies that a tenancy agreement must comply with the Act and regulations and set out standard terms and other data including:

- the correct legal names of the landlord and tenant;
- the address of the rental unit;
- the date the agreement is entered into and the tenancy starts;
- the address for service and telephone number of the landlord or agent;
- the agreed terms about whether the tenancy is for a fixed term or periodic tenancy
- the amount of rent payable and whether it rent varies with the number of occupants
- what day in the period that the rent is due;
- which services and facilities are included in the rent;
- the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

However, in cases where there is no written contract, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines "tenancy agreement" as follows:

*"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

That being said, in the matter before me, I find that the landlord had an obligation under the Act to create a tenancy agreement in writing. I find that, had the landlord followed the Act, the tenancy terms regarding what was to be included in the rent would have been fully clarified.

In any case, I find that I must accept the tenant's testimony that the parties had agreed that a washing machine was included in the tenancy.

With respect to terminating hydro services, I find that, under section 27 of the Act it states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

In this instance, I find that the deprivation of hydro or heat is not permitted under the Act. I accept the tenant's testimony that the hydro was not provided for an unacceptable period of time and that this negatively impacted the value of the tenancy.

Based on the landlord's failure to provide the essential service of hydro as required under the Act I find that the tenant is entitled to compensation of \$350.00. Based on the landlord's failure to provide the agreed-upon amenity of a washing machine under the tenancy agreement, I find that the tenant is entitled to an additional \$60.00.

I find that the tenant is entitled to total compensation of \$460.00 comprised of a retro-active rent abatement of \$410.00 and the \$50.00 cost of this application.

I hereby issue a Monetary Order in favour of the tenant in the amount of \$460.00. This order must be served on the landlord and may be enforced through Small Claims Court, if necessary.

### **Conclusion**

The tenant is successful in the application and is granted a retroactive rent abatement for loss of value of the tenancy and is issued a Monetary Order.

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: September 17, 2013

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Residential Tenancy Branch

