



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RP, PSF, RR, FF

### 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. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord to make emergency and other repairs to the unit – Section 32;
3. An Order for the Landlord to provide services required by law – Section 65;
4. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65; and
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 under oath.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to repairs?

Is the Tenant entitled to the provision of services?

Is the Tenant entitled to a reduction in rent?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on June 1, 2012. Rent of \$1,000.00 is payable each month on the first day of the month. The Landlord collected a security deposit of \$1,000.00 at the outset of the tenancy.

The Tenant states that sewage is overflowing into the garage and is coming up on the ground outside the unit. The Tenant states that this has been since ongoing since the onset of the tenancy making the lower half of the unit unliveable. The Tenant states that despite numerous requests for repairs, the Landlord has refused to make those repairs. The Tenant states that the public health authority was contacted approximately three weeks ago and that they confirmed that the water standing on the ground and in the garage is sewage. The Tenant states that they were told by this authority that the authority would resolve the sewage issue directly with the Landlord. The Tenant states that as a result of the sewage, they lost use of the basement area due to the foul smells and claim \$3,000.00 for the loss of use half of the unit to date. The Tenant claims emergency repairs to the sewage and a rent reduction of \$500.00 until the repairs are completed by the Landlord.

The Landlord states that the unit has three bedrooms on the top floor and that at the onset of the tenancy the Tenants were informed that the lower half of the house containing two unfinished bedrooms were not part of the tenancy agreement. The Landlord agrees that the tenancy agreement sets out an address for the whole house and that no suites are contained in the house. The Tenant states that the Landlord did not say anything to them about the lower floor not being included in the rental unit and that the Landlord knew that the Tenants would be using the entire house as they have three children.

The Landlord states that when the Tenants first reported the matter to the Landlord, the Landlord inspected the unit, found that water was standing and immediately pumped the water out. The Landlord agrees that they were contacted by the public health authority and that the Landlord was informed by letter to deep the area dry, pump out any

standing water, to cover the areas and to hook up the sewer system to the city system. The Landlord states that as the property is situated on agricultural land, it will take anywhere from 6 months to a year to have the sewer system changed. The Landlord states that as long as the areas are kept dry and covered there is no health problem to the Tenants. The Tenants states that the Landlord did not put any pumps on the areas until after they were contacted by the public health authority and that although the Landlord drained and covered the areas, the sewage leak has continued and the areas are muddy. The Tenant states that the lower part of the unit still smells.

The Tenants orally gave their notice to end the tenancy on or before 1:00 p.m. on November 30, 2013 and the Landlord accepted this notice. The Landlord agrees to return \$500.00 of the security deposit on or before November 13, 2013.

### Analysis

Section 32 of the Act provides that 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.

Section 33 of the Act provides that emergency repairs are those repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing, inter alia, damaged or blocked water or sewer pipes or plumbing fixtures.

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, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the undisputed evidence that the public health authority inspected the unit and directed the Landlord to make interim repairs and to seek out connection with the city sewage system, I find on a balance of probabilities that sewage did leak and given the evidence of smell from the Tenant, I find that this leakage affected the use and occupation of the lower part of the unit. Given the written tenancy agreement indicating the address as the entire house and considering the Tenant's evidence that the whole house was rented, I find that the Tenants were entitled to use and occupy the lower part of the unit and given the smell from the sewage were unable to use this part of the unit.

As the amount claimed by the Tenant amounts to approximately \$176.00 per month for the period June 2012 to November 2013 that the Tenant was unable to use the lower level due to the smell, I find that the Tenant has substantiated a reasonable amount of compensation for its loss and I find that the Tenant is therefore entitled to **\$3,000.00**.

Given the notice to end the tenancy provided at this hearing and considering the Landlord's acceptance of the notice, I find that the Tenants have provided a notice to end tenancy in conformance with the Act. As the Landlord has agreed to return **\$500.00** of the security deposit taken, I provide the Tenants with a monetary order that includes this amount. As the tenancy is ending, I dismiss the Tenant's claims for a rent reduction, repairs and facilities. As the Tenant has been successful with its claim, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,550.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$3,550.00**. 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: November 4, 2013

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Residential Tenancy Branch