



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      erp, ff, mndc, o, olc, psf, rp

### Introduction

The tenant applies for an order for repair to the premises including emergency repairs, a monetary award as against the landlord, that the landlord comply with the Act, Regulation or tenancy agreement, and that the landlord provide services required by law. The tenant's application further requests more time to make an application to cancel a Notice to End Tenancy. At the hearing, the tenant stated he wished to add additional matters to his claim.

The landlord did not attend the hearing. I accept that the landlord was personally served with notice of this hearing, and note that the landlord submitted some evidence one week in advance of the hearing, indicating the landlord was aware of the hearing.

### Issue(s) to be Decided

- Is the tenant entitled to an order for emergency repairs?
- Is the tenant entitled to an order for other repairs?
- Is the tenant entitled to monetary compensation from the landlord?

### Background and Evidence

This tenancy began May 1, 2009. Monthly rent is \$1,000.00. The tenant only pays \$900.00 per month however, on the basis of an order made April 20, 2010 of reduced rent of \$100.00 per month, until a few minor repairs were made by the landlord. The tenant contends these repairs were never fully completed.

The landlord did not attend the hearing, but tendered a written statement. The statement was not in affidavit form. I have read and considered the landlord's statement. I had no opportunity to question the landlord about this statement, however, and therefore attach less weight to this statement, and more weight to the tenant's oral testimony provided at the hearing. Where the tenant's evidence contradicts that of the landlord's written statement, I prefer the evidence of the tenant.

The tenant testified that there had been a major flood in the home in April 2012. Repairs were made, but there continued thereafter to be a small sporadic leak of water from pipes concealed in the ceiling above the tenants' spare bedroom, on the left hand side near the bedroom door. The water leaks from these pipes onto the ceiling drywall,

resulting in a depression in the ceiling. The tenant submits there are further repairs the landlord should attend to as well.

In January, 2013, ostensibly due to an electrical short in one of the elements, the wiring in the stove top overloaded and was damaged. The tenant reported this to the landlord verbally in January, and also made note of it on a rent cheque. The landlord failed to make any repair, but replaced the stove on November 14, 2013, subsequent to the tenant's claim being served upon him.

For the past year, the washing machine has not worked properly. It does not spin properly, and the wet clothes therefore take about 4 hours to dry instead of one hour. This has resulted in an increase in the tenant's hydro costs. The tenant has compared current hydro bills with those from the previous year, and has calculated an increase of consumption of 20%, which is calculated to be an extra \$20.00 per month, which the tenant attributes to the increased use of the dryer. The landlord failed to make any repair to the washer, but replaced the washer on November 14, 2013.

The tenant incurred certain costs to prepare for this hearing, for memory cards and bank documents, and for his filing fee.

The landlord (in his written statement) acknowledges that the January, 2013 and April, 2013 rent cheques have notations on them about issues concerning the tenant in the premises. The landlord also notes that the tenant was served a two month notice to end the tenancy on November 30, 2013, which will end this tenancy effective January 30, 2014.

#### Analysis

The application for more time to dispute a notice ending the tenancy appears to be an error in the tenant's application. There is no evidence of any such notice having been served upon the tenant at the time his application was filed on November 1, 2013. The two month notice referenced by the landlord was not served until November 30, 2013. Accordingly the claim for more time is dismissed.

The tenant requested that I consider additional matters at the hearing, beyond those raised in this application. I denied this request. The landlord has been given no notice of these additional requests, and the tenant has not made any formal amendment to his claim. A hallmark of justice in hearings of this nature is that parties are provided proper and sufficient notice of a claim, and are provided particulars of such claim. That has not occurred in this case. If the tenant is not able to resolve these further issues directly with the landlord, and wishes to proceed with a claim for dispute resolution about these issues, he may file a new application.

Leaking water pipes in some cases can be classified as emergency repairs, if the leaks are major (see section 33(1) of the Residential Tenancy Act). The description of the leak in question over the spare bedroom is not demonstrated to be a major leak, and

therefore does not qualify as an emergency repair. The claim for emergency repairs is dismissed.

While not an emergency, any leak of a water pipe requires repair. The landlord is therefore ordered to make such repair at such time as he is able, and as is suitable to both parties. I note that the landlord has alleged that the tenant has refused entry to the landlord into the premises in the past. An option is for the parties to negotiate a date that is suitable for both as to when the repair is to occur. Clearly the repair will involve some mess and disruption to the tenant, and given that he contends the problem has already existed for 20 months, he may wish simply to not have the repair made until after the tenancy ends at the end of January.

Given that the problematic appliances have now been replaced, no repair is required or ordered for the stove or the washer.

In the prior decision made in April, 2012, the decision maker wrote:

“Section 7(2) of the Act states that a party who suffers damages must take reasonable steps to minimize their damages. I find it unreasonable that the Tenants took over a year to bring their application for compensation for the Landlord failing to make repairs and as result, I dismiss their application for that compensation.”

The tenant has again delayed a significant period in advancing a claim for repair and for compensation for such repair. I note however, that the tenant did provide some initial notice to the landlord of the cited problems. In my view it would be reasonable for a tenant to provide some period after such complaint to the landlord, to allow the landlord to effect repairs before advancing to the step of a formal application for repair and compensation. In my view, a reasonable period would be a maximum of 6 weeks, and such if the repair was not attended to within a 6 week period, the duty to minimize the damages set out in Section 7(2) of the Residential Tenancy Act would be triggered. Allowing a further 2 weeks to file a claim, I have determined that the tenants' duty to minimize their damages required a claim to be filed within a 2 month period, and any loss suffered beyond the 2 month period is not compensable.

A reasonable sum for the loss of use of the stove top is \$50.00 per month, and the total for a 2 month loss is \$100.00. This sum is awarded.

The defective washer did prevent the tenant from using it, or doing laundry, it just required extra drying time for the wet clothes. No compensable loss is therefore established for lack of a proper washer. I accept the tenant's calculations that the extra dryer costs are \$20.00 per month, and the total for a 2 month period of loss is \$40.00. This sum is awarded.

It is common that time and some expense is incurred in the preparation of a claim, but the only authority I have under the Residential Tenancy Act is to compensate for the cost of the applicant's filing fee. I award the sum of \$50.00 to the tenant, representing

recovery of the tenant's filing fee, but dismiss the claim for any further costs of the applicant in filing this claim and preparing for the hearing.

The total compensation awarded is \$190.00. This sum is payable by the landlord to the tenant immediately.

Conclusion

The landlord must repair any leak to water pipes above the spare bedroom.

The landlord must pay the sum of \$190.00 to the tenant.

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: December 17, 2013

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Residential Tenancy Branch

