



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenants' application (filed September 30, 2013): MT; CNR; ERP; RP; MNDC; MNR; FF

Landlord's application (filed October 3, 2013): OPR; MNR; MNSD; MNDC; FF

### **Introduction**

This Hearing was convened to consider cross applications on November 21, 2013. The Tenants sought more time to file an application to cancel a 10 day Notice to End Tenancy for Unpaid Rent issued September 25, 2013 (the "Notice"); to cancel the Notice; for Orders that the Landlord make emergency and regular repairs to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; for recovery of the cost of making emergency repairs to the rental unit; and to recover the cost of the filing fee from the Landlord.

The Landlord sought an Order of Possession; a Monetary Order for unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenants.

On November 25, 2013, an Interim Decision was issued, which should be read in conjunction with this Decision. The Landlord was provided with an Order of Possession effective December 31, 2013. The Tenants' application for Orders that the Landlord make emergency and regular repairs to the rental unit was dismissed. The remainder of the parties' Applications were adjourned to January 22, 2014.

The parties signed into both teleconferences and gave affirmed testimony at the Hearing.

### **Preliminary Matter**

The Landlord's legal counsel submitted that one of the "Tenants" was not a tenant as defined by the Act, but was only an occupant. He submitted that the occupant's mother was the only tenant under the tenancy agreement. The Tenants did not dispute this and the tenancy agreement provided in evidence identifies the mother as the tenant and the

daughter as an adult occupant. Therefore, I amended the Tenant's application to remove the daughter's name from the list of Applicants.

Both parties submitted requests to adjourn the matters again. The Landlord's counsel sought an adjournment because he was unable to attend the teleconference. However, circumstances changed and he was able to sign in to the teleconference. Therefore, the Landlord withdrew his application to adjourn.

The Tenant sought an adjournment because she wanted more time to prepare for the teleconference. The Tenant filed her Application for Dispute Resolution on September 30, 2013, and I find that she has had ample time to prepare for the Hearing. Therefore, I dismissed her application for an adjournment. It is important to note that in her written request for an adjournment, the Tenant sought advice from me with respect to how and when to provide documentary evidence to prove her claim. I am an independent and impartial decision maker and this is not my role. Information Officers are available at the Residential Tenancy Branch to advise parties with respect to procedural matters. In any event, all documentary evidence must be provided to the Residential Tenancy Branch and served upon the other party as soon as it is available, and in any event at least five clear days before the Hearing date. In this case, the Hearing began on November 21, 2013, and I made no order that either party could present more evidence.

### **Issues to be Decided**

- Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement; recovery of the cost of making emergency repairs to the rental unit; and to recover the cost of the filing fee from the Landlord?
- Is the Landlord entitled to a monetary award for unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant?

### **Background and Evidence**

The Tenant gave the following testimony:

The Tenant repeated much of the testimony that she provided on November 21, 2013. She submitted that the Landlord agreed that she could pay a reduced rent because 2/3rds of the rental unit was not habitable due to flooding. She testified that the reduced rent would be backdated to April, 2013, and that the Landlord agreed that the Tenant didn't have pay any rent until the rent abatement was satisfied in December, 2013. She

stated that this was to compensate her for \$7,500.00 that she was out of pocket for paying a contractor to perform repairs, and also to compensate her for loss of use of 2/3rds of the rental accommodation due to major leaks.

The Tenant stated that she rented the rental unit on the understanding that she could rent out a suite on the lower level. She stated that was advised by a restoration company that it was unsafe to rent out the downstairs suite because the wiring was dangerous and vents had been installed backwards. The Tenant testified that the Landlord's own contractor told her that repairs would cost at least \$70,000.00.

The Tenant testified that the Landlord would not provide her with a copy of his insurer's report, but that the Landlord's insurer said they would not cover the cost of repairs because the rental property was not built properly.

The Tenant agreed that she had not paid any rent for September to December, 2013.

The Tenant stated that only one of the three bathrooms was operational. She stated that her daughter had to shower elsewhere because of mobility issues. The Tenant submitted that 2/3rds of the house was not livable and therefore she is seeking compensation from the Landlord.

The Tenant's claim is for a total of \$19,796.00, but she stated that she does not want a monetary award in that amount. Rather, she is seeking rent abatement for loss of the value of the tenancy and that it should be applied in lieu of paying rent. The Tenant calculated her loss, as follows:

"Rent from March to October 1, 2013 = 7 months of rents plus 2/3 of the utilities on 2 suites = \$2,700 + 128.00 x 7 = \$19,796.00"

The Landlord's counsel gave the following submissions:

The Landlord's counsel denied that the Landlord had agreed to reduce the rent by 66%. He submitted that the Tenant provided no documentary evidence to support her allegations that she had paid \$7,500.00 to her contractor, or that any agreement had been made for reduced rent. The Landlord's counsel submitted that in August, 2013, the Landlord had agreed that the Tenant could use the unpaid balance of her rent as a deposit for the Tenant's contractor. He stated that the Landlord advised the Tenant that if her contractor estimated the job was going to cost more than \$15,000.00, then she must talk to the Landlord. The Landlord's counsel submitted that the Landlord also required copies of the Tenant's contractor's invoices. In support of this testimony, the Landlord's counsel referred to an e-mail dated August 7, 2013, which was provided in

evidence. He stated that the Tenant has not provided any documentary evidence to prove that she paid any money to her contractor.

The Landlord's counsel stated that 2 of the three bathrooms were operational and only one of the four bedrooms was not useable because the Tenant's contractor took the walls down.

The Landlord's counsel submitted that the Tenant owes outstanding utilities in the amount of \$765.76 up to and including June 30, 2013. The Landlord provided a copy of the utility bill in evidence. The Landlord's counsel stated that there are outstanding additional utility bills in the amount of \$1,031.48.

The Landlord's counsel submitted that limited weight should be given to the Tenant's "hearsay" evidence because the Tenant provided no documentation to support it. The Landlord's counsel submitted that there was no reliable evidence that the rental property was "effectively a write-off". He stated that it was curious that the Tenant says the house was a "hovel", yet she took no steps to address the issues.

The Landlord's counsel admitted that there were some leaks, but stated that the landlord dealt with them in a timely fashion. He stated that the Landlord's insurance claim was denied, but he could not remember why. He stated that he believed it might have been because insurance doesn't cover that type of water ingress.

The Landlord's Application indicates that the Landlord seeks a monetary award for September, October and November 2013, and unpaid utilities in the amount of \$765.76. The Landlord's counsel asked for a monetary award for unpaid rent for December, 2013 as well as unpaid rent for June and July, 2013 and additional unpaid utilities of \$1,031.48, for a total amount of \$25,197.24.

### **Analysis**

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me both parties have the burden of proving their own claims.

On August 19, 2013, a previous hearing was held to consider the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent. The Tenant signed into the hearing, but the Landlord did not. A copy of the Decision was provided in evidence.

The arbitrator found that the Landlord had been duly served with notice of the hearing and the matter proceeded in the Landlord's absence. The arbitrator accepted the Tenant's undisputed testimony that "the landlord was in agreement to have the tenants withhold rent and apply that rent to the contractor of their choice and that the balance of costs would be paid by the landlord when provided with proper invoices."

Regarding the Tenant's application:

- Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement; recovery of the cost of making emergency repairs to the rental unit; and to recover the cost of the filing fee from the Landlord?

I find that the Tenant failed to provide sufficient evidence that 2/3rds of the rental property was unusable. However, in his submissions the Landlord's counsel submitted that one of three bathrooms and one of four bedrooms were unusable. The tenancy agreement indicates that rent is \$3,900.00 per month. I accept the Landlord's evidence that the rental unit consists of 3 bathrooms and 4 bedrooms. I find that the Tenant did not have full use of the rental property and therefore she is entitled to rent abatement.

The Tenant supplied insufficient evidence of the number of months that she was without full use of the rental unit. Therefore I allow the rent abatement from August, 2013, which is the month indicated on the emails provided in evidence, when the parties were negotiating compensation to the Tenant.

Section 67 of the Act provides me with the authority to determine the amount of compensation. The Tenant did not submit that she could not use the kitchen or other living areas in the rental unit and therefore, I find that the tenancy was devalued by 25% or **\$975.00** per month.

I find that the Tenant provided insufficient evidence to support her claim for recovery of the cost of making repairs to the rental unit. No invoices were provided in evidence. This portion of her application is **dismissed without leave to reapply**.

Regarding the Landlord's application:

- Is the Landlord entitled to a monetary award for unpaid rent and utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant?

I have found that rent for the months of August to December, 2013, is \$3,225.00 per month. I have also dismissed the Tenant's claim for recovery of the cost of making repairs to the rental unit.

The Landlord's Application for Dispute Resolution seeks unpaid rent for the months of September and October, 2013. Tenant acknowledged that she did not pay rent from September to December, 2013, and therefore I amend the Landlord's Application to include a claim for the months of November and December, 2013.

I find that the Landlord is entitled to unpaid utilities in the demonstrated amount of **\$765.76**.

Further to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards partial recovery of his monetary award.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent (\$3,900.00 x 4 months)	\$15,600.00
Unpaid utilities	<u>\$765.76</u>
Subtotal	\$16,365.76
Less abatement (\$975.00 x 5 months)	\$4,875.00
Less set off of security deposit	<u>\$1,950.00</u>
TOTAL	<b>\$9,540.76</b>

Regarding recovery of the filing fees

Both parties' Applications had merit and I make no order with respect to recovery of the filing fee for either party.

**Conclusion**

I find that the Tenant is entitled to rent abatement in the amount of **\$675.00** per month for the period between August 1, 2013 and December 31, 2013. This amount has been set off against the Landlord's monetary award.

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlord with a Monetary Order in the amount of **\$9,540.76** for service upon the Tenant. This Order may be filed in the Provincial Court (Small Claims) 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: February 07, 2014

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Residential Tenancy Branch

