



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNDC, PSF, RR, RP, ERP, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant seeking an order to force the landlord to complete repairs and comply with the Act and seeking monetary compensation for loss of value to the tenancy.

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.

### **Preliminary Matters:**

#### **Evidence**

At the outset of the hearing it was determined that the tenant served an evidence package to Residential Tenancy Branch on February 5, 2014, which arrived 6 days prior to the hearing date. However, the evidence package was served to the landlord and did not arrive the required 5 days prior to the hearing, and in fact, the landlord has not yet picked up the registered mail package.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure require that an applicant serve specific documents to the respondent, together with a copy of the Application for Dispute Resolution, copies of all of the following:

- the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;

- the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- the details of any monetary claim being made, and
- any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served. (my emphasis)

Rule 3.4 of the *Residential Tenancy Branch Rules of Procedure* require, to the extent possible, that an applicant file copies of all available evidentiary documents or other evidence at the same time as the application is filed.

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* states that :

- a) Copies of any documents or other evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding, as those days are defined in the “Definitions” part of the Rules of Procedure.

According to the “*Definitions*” portion of the *Rules of Procedure*, when the number of days is qualified by the term “*at least*” then the first and last days must be excluded, and if served on a business, it must be served on the previous business day. Weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

I find that the tenant’s service of the evidence to the RTB, did not meet the rules requiring service at least 5-days in advance of the hearing, under the legislation. Accordingly, the evidence package submitted by the tenant, is not accepted and will not be considered. However, the applicant is permitted to give verbal testimony on the matter.

The respondent landlord’s evidence package was received by the Branch and by the tenant. The landlord’s documentary evidence will therefore be considered.

### Sever Monetary Claim

Part of the tenant’s application is a request for immediate intervention to order the landlord to complete repairs to deal with an electrical situation that, according to the tenant, is hazardous. The tenant’s application also seeks monetary compensation for the landlord’s alleged failure to do repairs and provide services and facilities required by law.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that if, in the course of the dispute resolution proceeding, the arbitrator determines that it is appropriate to do so, the arbitrator may dismiss the unrelated disputes contained in a single application with, or without, leave to reapply.

In this instance, I find that it is not possible to make a determination on the subject of monetary compensation, until the hydro situation is thoroughly investigated by a qualified professional and a formal report is available. No such report is in evidence from either party.

For this reason, I find that due to a possibility that there may be an electrical safety concern that requires repairs, this issue must take precedence and will be heard.

However, I find that the portion of the tenant's application dealing with the monetary claim must be severed. The monetary claim portion of the application is hereby dismissed with leave and the tenant is at liberty to reapply.

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

Is the tenant entitled to an order to force the landlord to complete repairs and provide services and facilities required by law?

### **Background and Evidence**

The tenancy began November 2013 and the current rent is \$1,300.00 per month. The tenant testified that there have been ongoing problems with the electricity services, including exorbitant costs and malfunctioning circuits. The tenant testified that the landlord had not sufficiently addressed the problems and, as a result, the tenant consulted with hydro officials and was told that the electrical system is not compliant with the regulations and may be dangerous.

The landlord denied that this is the case. According to the landlord, they made arrangements for three separate appointments for the electrician to access the unit to investigate the problem and make repairs. The landlord testified that it took more than one service call as the tenant was not available and failed to cooperate. The landlord testified that, on February 24, 2014, they finally succeeded in completing the necessary repairs. The landlord testified that the hydro service is safe. However, the landlord had not submitted any official report into evidence to confirm this.

The landlord accused the tenant of tampering with the electrical panel and pointed out that the tenant's only concern seemed to focus only on the cost of the hydro. The landlord stated that there is no problem with the wiring.

The tenant expressed a concern that the written tenancy agreement signed by the parties had been altered to show it as a fixed term tenancy, when it was actually signed as a month-to-month agreement.

A copy of the tenancy agreement was submitted into evidence by the landlord. The contract indicated in section 2 that this was for a fixed term of one year. However, in the same section of the contract, it also indicated that this tenancy was a month-to-month tenancy.

### **Analysis**

I find that, under sections 6 and 58 of the Act, an arbitrator is authorized to make determinations and orders to enforce both the Act and the tenancy agreement.

I find that section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

I find that the landlord is required, under section 32 of the Residential Tenancy Act, to respond to complaints and complete repairs to infrastructure matters, such as heat or hydro concerns, particularly if an issue is raised about a health or safety hazard.

The tenant's position is that a serious problem still exists with the electrical system and the landlord's position is that all necessary repairs were fully completed in a timely manner.

I find that the question about whether or not the electrical system is deficient or dangerous can only be answered by a tradesperson qualified in the field. I find that, under the Act, the landlord's obligation, in response to the tenant's complaint, must entail hiring a licensed electrician to examine the entire system and issue a written report detailing the results.

Naturally, a expectation follows that any deficiencies or repair issues will be rectified. Once the electrical system has been cleared as safe and compliant with residential standards, a copy of the official report must be forwarded to the tenant. .

Accordingly, I hereby order that the landlord:

- engage a qualified electrical contractor to assess the panels and electrical circuits,
- authorize the contractor to make necessary alterations or repairs to ensure the system is up to the required standards,

- ensure that an official report is issued by the contractor, and
- deliver a copy of the report to the tenant without delay.

I also find that, based on the wording of the tenancy agreement, this tenancy is not for a one-year fixed term, but is actually a month-to-month tenancy.

As the tenant's application is successful, I find that the tenant is entitled to be reimbursed the cost of the application. I hereby order that the tenant is entitled to deduct \$50.00 from the next rent owed as a one-time deduction.

### **Conclusion**

The tenant is partly successful in the application as the landlord is ordered to engage qualified contractors to assess the electrical system and to share the written report with the tenant. The remainder of the tenant's application, including the monetary claim, is dismissed with leave to reapply.

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 11, 2014

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Residential Tenancy Branch

