



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, RP, FF

### Introduction

This hearing dealt with an application by the tenant for orders setting aside a notice to end tenancy and compelling the landlord to make repairs to the rental unit, and for a monetary order. Both parties appeared and had an opportunity to be heard.

By the date of the hearing the tenant had moved out of the rental unit rendering the applications for orders setting aside the notice to end tenancy and repairs unnecessary. The hearing dealt with the tenant's application for a monetary order only.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This tenancy commenced December 1, 2012 as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent of \$1275.00 was due on the first day of the month. In addition to the rent, the tenant was also responsible for the hydro.

The rental unit is a one bedroom, 450 square foot apartment located on the eleventh floor. There was laminate flooring in the living area, carpet in the bedroom, and tile in the kitchen and bath.

On June 30, 2013, a malfunction in the toilet caused a large flood. The tenant was not home at the time. The building manger called the restoration company as soon as the flood was noticed and they arrived promptly.

The restoration company sucked up the water, bagged the tenant's belongings, sprayed the bedroom with something, and installed eight to ten fans and two dehumidifiers. They directed the tenant to keep the windows shut and left. The tenant testified that none of her furniture was water damaged.

The tenant testified that the landlord sent someone to tear out the flooring about two weeks after the flood. She helped this individual and the flooring was removed within a day. She testified that the new laminate flooring was installed in the living room and bedroom about four weeks after the flood. This work took about two days. Although the floor was installed the baseboards never were.

The landlord testified that the flooring was installed on the weekend of July 6 and 7. She said there were no baseboards in the unit before the flood; only quarter round used as the transition between the floor and the walls. She wanted to upgrade the unit so she bought baseboards. The landlord testified that the flooring contractor found the tenant very difficult and refused to go back to install the baseboards. She arranged for another contractor but after he met the tenant, he refused to go back. The landlord said the flooring that was installed was an upgrade from the previous flooring and that it was fitted close to the walls.

The tenant testified that the toilet was fixed about ten days after the flood. She was able to use the toilet during this time – she just had to turn the water supply to the toilet on and off again each time she wanted to flush it. Her use of the sink and bathtub were uninterrupted.

The landlord testified that the strata arranged for the repair of the toilet within a few days of the flood.

The tenant testified that the fans and dehumidifiers operated continuously until they were removed fourteen to sixteen days after the flood. The landlord said the equipment was in place for about ten days.

The restoration company cut holes into four walls in the unit. From time to time they checked the walls to determine the moisture levels in the unit. The tenant testified that the walls were repaired about six weeks after the flood. The parties gave different descriptions of the size of the holes. The tenant's version is that they were one foot by three or four feet.

The tenant testified that in August she started noticing a smell in the refrigerator. Although she cleaned it thoroughly the smell kept getting worse. She called an appliance company who suggested that it might be a "sour fridge" which is caused by water getting into the insulation of the refrigerator and mold developing. They told her that nothing could be done once this occurred. She threw out all the food in the refrigerator. After that she could not keep anything in the refrigerator for more than two

days or it would absorb the odor. The odor kept getting worse and was noticeable in the apartment. The tenant claims \$200.00 for loss of food and \$50.00 for the inconvenience suffered.

The tenant testified that she reported the problem to the landlord by telephone in August but had no response. In September her mother was with her and she called the landlord. The landlord and the building manager attended at the unit. They said they did not smell anything and refused to replace the refrigerator.

The landlord testified that she came to the unit as soon as the problem was reported. When she arrived the tenant's mother would not let her in. Eventually she made her way into the unit. She testified that the refrigerator was full of food; the refrigerator and the food were cold; and there was no offensive odor. The landlord said she called the manufacturer who said the water would have to be two feet high to cause "sour fridge".

The tenant says that the closet door in the bedroom was never re-installed.

The tenant claims that one of the contractors sent to the rental unit by the landlord removed a black garbage bag that contained eight pairs of shoes. The tenant claims \$1000.00 as the depreciated value of the shoes. The landlord said she knew nothing about this.

On October 24, 2013, the tenant sent the landlord a letter outlining her claims for financial compensation. She withheld payment of the November rent and was subsequently served with a 10 Day Notice to End Tenancy for Non-Payment of Rent.

The tenant moved out of the rental unit on December 15, 2013, without paying any rent for November or December, without giving the landlord any notice that she was doing so, without returning the keys to the landlord, and without providing a forwarding address. In the hearing the tenant was very careful not to give the landlord any information about her current address.

The tenant did not have renter's insurance.

### Analysis

When a rental unit is damaged by an unforeseen event, such as fire, flooding or pest infestation, it is upon the landlord to repair the rental unit and the residential property. Tenant's insurance generally covers damages or loss a tenant may incur as a result of an unforeseen event. Damage to a tenant's property or other losses, other than the

loss of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

There is no evidence that the flood was caused by the action or inaction of either the landlord or the tenant. Once the flood occurred it was the landlord's responsibility to ensure that repairs were made promptly and I find that the landlord did so.

However, as explained in *Residential Tenancy Policy Guideline 16: Claims in Damages* where a landlord and tenant enter into a tenancy agreement, each is expected to perform their part of the bargain. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of their own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation is in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

The tenant's testimony, which represents the outside limits of the claim, is that within two weeks the drying equipment had been replaced and the toilet repaired; within four weeks the floors had been replaced; and within six weeks the four holes in the walls had been repaired. The tenant's evidence is that except for her claim regarding the refrigerator the kitchen was unaffected by the flood as was her use of the bathroom sink and bathtub. I find the lack of baseboards and the uninstalled closet door continued as minor inconveniences. Having considered all of these facts, I allow the tenant the sum of \$500.00 for loss of use of a portion of the premises.

Regarding the tenant's claims for loss of food and shoes, the tenant must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

The tenant's claim with respect to the refrigerator and loss of food is dismissed. The only evidence before me is the conflicting oral testimony of the parties. Without any additional evidence to tip the balance of probabilities in the tenant's favour, I cannot make the order requested.

The tenant's claim for the missing shoes is also dismissed. Other than the tenant's bald statement there is no evidence that the shoes existed or, more importantly, of their

actual value. Even if they were removed by a contractor, an allegation on which no finding is made, the landlord is not responsible for the actions of someone hired by her.

Conclusion

I find that the tenant has established a total monetary claim of \$550.00 comprised of damages for loss of use of a portion of the rental unit as detailed above and the \$50.00 fee paid by the tenant for this application. I grant the tenant a monetary order under section 67 in that amount. 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: February 05, 2014

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Residential Tenancy Branch

