



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, ERP, LRE, MNDC, MNR, MNSD, OPT, RP, RR, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for more time to file an application to cancel a Notice to End Tenancy; to cancel the One Month Notice to End Tenancy for unpaid rent; for an Order for the landlord to make emergency repairs for health or safety reasons; to suspend or set conditions on the landlords right to enter the unit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary order for the cost of emergency repairs; for a monetary Order to recover the security deposit; to obtain an Order of Possession of the rental unit; for an Order for the landlord to make repairs to the rental unit; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application

At the outset of the hearing the tenant withdrew their application for an Order of possession of the rental unit and to recover the security deposit as the tenancy is still in place at this time.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided some documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All

evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the tenants entitled to more time to file an application to cancel a Notice to End Tenancy?
- If so are the tenants entitled to have the One Month Notice to End Tenancy cancelled?
- Are the tenants entitled to a Monetary Order for the cost of emergency repairs?
- Are the tenants entitled to an Order to suspend or set conditions on the landlord's right to enter the rental unit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to make emergency repairs?
- Are the tenants entitled to an Order for the landlord to make repairs to the unit, site or property?
- Are the tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

The parties agree that this tenancy started on January 15, 2013. The tenant testifies that this was a fixed term tenancy for one year; the landlord testifies that this was a month to month tenancy. The tenant testifies that rent for this upper unit was \$900.00 plus all the utilities for the entire house the landlord testifies that rent is \$1,500.00 per month plus all the utilities for the entire house less 20 percent. Neither party has provided a copy of a written tenancy agreement in evidence.

### **One Month Notice**

The tenant (YF) testifies that the landlord served a One Month Notice to End Tenancy upon the tenants. This Notice was served in person on February 28, 2014 and had an effective date of March 31, 2014. The tenant testifies that the Notice gave two reasons to end the tenancy one being that the tenants are repeatedly late paying rent, the second being that the tenants have significantly disturbed the landlord or another occupant. Neither party has provided a copy of this Notice in evidence.

The tenants also seek more time to file an application to dispute the Notice.

### **Emergency repairs**

The tenant testifies that there have been many issues with repairs in the unit which the landlord does not attend to. The tenants have had some emergency repairs completed at their own expense however there remains a leaking pipe under the sink and the garage door does not lock which has resulted in break-ins in the tenants unit and garage resulting in the tenants' belongings being stolen. The tenants seek an Order for the landlord to repair the leaking pipe and to repair or replace the garage lock.

The landlord disputes the tenant's claims. The landlord testifies that he checked the pipes a week ago and they were not leaking. The garage lock was replaced the day the tenants moved in.

### **Suspend or set conditions on landlord's right to enter**

The tenant testifies that the landlord enters the unit and the tenants' garage without proper notice or permission. The landlord has done this when the tenants are not at home and has even brought other people into the tenants' unit. The landlord is able to enter from the basement unit and the basement tenants have informed the tenants that the landlord has entered their unit. Due to recent break-ins at the tenants' unit where property has been stolen the police have asked the landlord to put a lock on the adjoining door between the two units. The tenants seek an Order to set conditions on the landlord's right to enter the unit.

The landlord disputes the tenants' claims. The landlord testifies that he has never entered the tenants' unit without permission when the tenants have not been home. The landlord testifies that he has only been in the tenants' unit when they need repairs done.

### **Money owed or compensation for damage or loss**

The tenant testifies that when they moved into the unit the tenants told the landlord that their children are allergic to smoke. The landlord allowed the downstairs tenants to smoke both cigarettes and marijuana which caused an allergic reaction in the tenants' young daughter which resulted in a hospital visit. The tenant testifies that she informed the landlord and was told that he had spoken to the downstairs tenants but could do nothing about them smoking in their unit. The landlord's comments were for the tenants to move out. The tenants seek compensation from the landlord for this loss of enjoyment of their unit.

The tenant testifies that the landlord has never assisted the tenants even after the tenants unit was broken into because the downstairs tenants left their door unlocked and when the tenants front door was broken into and the garage. The police were called and the tenants had to pay for emergency repairs to the door locks and frame on the advice of the police. The tenant testifies that the landlord was given the invoice for \$683.00 which was paid by the tenants but the landlord refused to reimburse the tenants.

The tenant testifies that she was told by the landlord that they had to have all the utilities for the house in their name. The tenant was paying for this but then the landlord agreed to reimburse the tenant 20 percent because the tenants were also paying the bills for the tenants in the lower unit. The tenant thinks a fairer amount should be a two thirds split for the tenants and a one third split for the lower tenants. The tenant testifies that the lower tenants have since moved out however there is still heat and all the lights on in their unit.

The tenant testifies that the washing machine shared between the two units was damaged by the downstairs tenants when they moved out. This resulted in a flood and the tenants' clothes which were in the laundry room at the time became extremely wet. The landlord was notified about the flood but would not come and fix the machine or deal with the water in the basement. This resulted in the tenants having to get a restoration company out to look at the machine, dry up the water and put in dehumidifiers and fans. Eventually the landlord did bring someone round to check the washer and he said it was fine. The washer still did not work and during this time the tenants clothes were left wet and unwashed which resulted in the clothes becoming smelly and moldy. A week later the landlord replaced the washer with an old model. The tenant testifies that as she was the one who contacted the restoration company she is responsible to pay their invoice of \$2,289.00. The tenant testifies that she does not have this sort of money and it is the landlord's responsibility to pay the bill to protect his own property.

The landlord disputes the tenants' claims concerning the emergency lock repairs. The landlord testifies that the tenant only gave the landlord a copy of the invoice last week. The landlord testifies that he went the day after the tenants were broken into and had to fix everything himself. The landlord testifies that it was only the internal door frame which was damaged and the locks were not broken. The landlord testifies that the repair man must be untruthful concerning the work he has indicated was done on the invoice.

The landlord disputes the invoice from the restoration company and testifies that this is untruthful information. The landlord testifies that there was not a flood in the unit; the washing machine was working when the landlord brought someone to look at it. The tenant continued to complain so the landlord replaced it a week later. The landlord testifies that as the tenants hired the restoration company the tenants must be responsible for the invoice.

The tenant disputes the landlord's testimony. The tenant testifies that the landlord was given the invoice with the last rent payment and utility bills and police file number. The

tenant testifies that the landlord did not turn up the next day. The landlord came two or three days later when the tenant's mother was at home. The landlord only put some glue on a doorframe which fell out when the door was opened. The tenants had to then push this back together again.

The tenant disputes the landlord's testimony. The tenant testifies that the landlord came out and did see the water in the basement and the tenant's clothes all smelly and moldy. The tenant testifies that the landlord told the tenants to throw the clothes away because they smelt. The tenant testifies that they could not even take their clothes to the laundry as they were too wet to carry. The tenant estimates that the clothes had a value of \$1,500.00 however as these were used clothing items the tenant has reduced their claim to \$500.00 to take into consideration the depreciation of the clothing.

The landlord disputes the tenants claim that there was any damage to the tenants clothing and testifies that the washer did not flood.

The tenant testifies that they had no heat or hot water for two weeks when the furnace was not working. As this was during the winter months the tenants had to borrow heaters from friends to heat the unit. The tenant testifies that the landlord told the tenants that the downstairs tenants got angry with them because they had complained to the landlord about the downstairs tenants smoking and so the downstairs tenants turned off the furnace or the furnace just did not work. The landlord was informed but the furnace was not repaired for two weeks. The tenant testifies that she had informed the landlord around January 25, 2014 and the tenant had to call a furnace company to do the repair. This company were very busy at the time and agreed to come out the following Saturday but failed to do so. When the tenant called them they said they had forgotten so they did come late at night to make the repair. The tenant testifies that the landlord did pay for this repair but the tenants seek compensation for being without heat for two weeks.

The landlord disputes the tenants claim that they had no heat for two weeks. The landlord testifies that when the tenant informed the landlord the landlord called the basements tenants and asked them to call the furnace company. The furnace company came out the same day the tenant notified the landlord there was an issue.

### **Repairs to the unit, site or property**

The tenant testifies that the repairs that are outstanding at this time are the leaking pipe under the sink and the garage door lock.

### **Rent reduction**

The tenant seeks a rent reduction concerning the amount they paid for the repairs to the door and frames of \$683.00. The tenant testifies that they also paid a further amount of \$65.00 for a washer repair prior to the washer flooding. The tenants also seek \$80.00 for work completed to repair a door lock previously. The tenant testifies that she did provide invoices for this work. However I have no invoices in evidence from the tenant for either of these repairs.

The landlord disputes the tenants claim for a lock repair. The landlord testifies that a new lock was put on the internal garage door by the landlord on the day the tenants moved in. the tenant's mother was given two keys for this lock. The landlord testifies that he has not received a copy of the invoice for \$80.00 for this repair the tenant claims to have made. The landlord disputes the tenants claim for \$65.00 to repair the washer. The landlord testifies that he has not been provided with an invoice for any washer repair made by the tenant.

### **Analysis**

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for more time to file an application to cancel a One Month Notice to End Tenancy; if this Notice was served upon the tenant in person on February 28, 2014; the tenants had 10 days to file their application to dispute

the Notice. In this case the tenants filed their application on March 06, 2014 therefore the tenants did file within the time frame and do not require more time.

With regard to the tenants' application to cancel the Notice to End Tenancy; neither party has provided a copy of this One Month Notice in evidence for me to determine if it is a legal and valid Notice. As the landlord has the burden of proof to show that a legal and valid Notice was served upon the tenant then the onus is on the landlord to ensure a copy of the Notice is produced in evidence. As this has not occurred then I cannot determine that the One Month Notice is a legal or valid document and therefore it is dismissed. The landlord is at liberty to serve another Notice upon the tenant. The tenants' application to dispute the Notice is therefore upheld.

With regard to the tenants claim for emergency repairs, a landlord must repair items in a unit which are considered to be plumbing issues or issues resulting in a loss of security for the tenants. I find the landlords testimony to be vague concerning when he looked at the pipes and I find the landlords testimony to be vague concerning the garage door lock. **I therefore Order the landlord** to give written Notice to the tenants to enter the unit to inspect the pipes under the sink properly and to make any repairs that are required. **I further Order the landlord** to inspect the lock on the garage door and ensure it is secure. If the lock is not secure the landlord must repair or replace this and provided a new set of keys to the tenants. These repairs must be inspected by the landlord and completed within **seven days of receiving this decision**.

With regard to the tenants claim to set conditions on the landlords right to enter the unit; I have considered both parties testimony and find that it is one persons word against that of the other that the landlord has entered the tenants' unit without proper notice or permission. The tenants have the burden of proof in this matter and when it is one person's word against that of the other then the burden of proof is not met. Consequently I must dismiss this section of the tenants claim. I do however caution the landlord that he must provide **24 hours written Notice** to the tenants before entering



their unit. This Notice must contain the date and time of entry and the reason for entry for anything other than an emergency repair.

With regard to the tenants claim for money owed or compensation for damage or loss; the tenants seek to amend their claim as the amounts were estimated when they filed their application. The tenants seek compensation for a loss of quite enjoyment of their rental unit due to the landlord's failure to protect the tenants from the smoke from the lower unit. The landlord did not comment on this during his testimony and has therefore not disputed the tenants claim in this matter. The tenants have not placed a monetary amount on this section of their claim. The tenants have not disclosed how long they were affected by the smoke coming from the downstairs tenants unit. I find that as the landlord has not disputed that he did not deal with this issue that the tenants are entitled to some compensation. I therefore limit the tenants claim to **\$50.00** for a loss of quiet enjoyment due to smoke.

With regard to the tenants claim to recover the amount of \$683.00 for the lock and door repairs after a break in at the tenants' unit; while this may not have happened as a direct result of the landlords actions or neglect, I am satisfied that a break in did occur in the unit on more than one occasion which resulted in damage to the doors and locks. I am not satisfied with the landlord's evidence that there was no damage to the locks and that he repaired the door frame himself as the tenants have provided corroborating evidence from the repair man who attended the unit on the advice of the police. I find the repair mans invoice to be credible and therefore it is the landlord's responsibility to reimburse the tenants for this cost for work done to protect the landlord's property. I therefore uphold the tenants claim for **\$683.00**.

With regard to the tenants claim for reimbursement of utilities paid for the lower unit; when there are two units in a property with only one meter, then any utilities must be in the landlords name and not that of the tenants. It is unreasonable for the landlord to expect these tenants to pay for utilities used by other tenants. The landlord and tenants did agree that the landlord would reimburse the tenants one third of all utilities either

paid by the tenants or for future utility bills. I have cautioned the parties to ensure this agreement is put in writing and signed by both parties. I am not prepared at this time to issue an a Monetary Order to the tenants for any utilities already paid as the tenants have failed to provide any documentary evidence concerning utilities paid to date. The landlord must however reimburse the tenants before the next utility bill is due and payable for past utilities.

With regard to the tenants claim for money owed or the invoice from the restoration company; the tenant testifies that they must pay this to the restoration company as they engaged their services on behalf of the landlord. I am satisfied from the evidence presented that there was a water leak in the basement which was likely to have been caused from the washing machine. I find the repair mans invoice to be credible concerning the condition of the washer and the work completed to dry the basement. I therefore Order the landlord to pay the tenants for the cost of this work of **\$2,289.00** to enable the tenants to pay the restoration company upon receipt of this money from the landlord.

With regard to the tenants claim for \$500.00 for damage to their clothing and being without a washer; the tenants has provided insufficient evidence to show how much clothing was damaged or how the tenants mitigated the loss by attempting to dry the clothes so they could be taken to the laundry to wash. The tenants have also provided insufficient evidence to show that the clothing was damaged beyond repair or for an amount to replace the clothing. The tenants have insufficient evidence to show how long they were without the laundry facilities. Consequently, the tenants have not met the burden of proof in this matter and I must dismiss the tenants claim.

With regard to the tenants claim for compensation for being without heat and hot water for two weeks; I find the testimony heard today from the tenant is more credible then that heard from the landlord. However, the tenants have insufficient evidence to show exactly how many days they were without heat or hot water consequently I must limit the tenants claim to **\$100.00** compensation.

With regard to the tenants claim for repairs, as this has been dealt with under emergency repairs I am not required to deal separately with this portion of their claim. This section is therefore dismissed.

With regard to the tenants claim for a rent reduction of \$683.00 for the door frame and lock repair; as I have dealt with this section of the tenants claim under compensation the tenant will receive a Monetary Order for this amount and therefore the tenant is not also entitled to a rent reduction for the same amount. With regard to the tenants claim for \$65.00 and \$80.00 for a washer repair and a lock repair; I have insufficient evidence from the tenant concerning these aspects of their claim. Consequently the tenants have not met the burden of proof in these matters and these sections of the claim are dismissed.

With regard to the tenants claim for repairs to the unit, site or property; this matter has been dealt with under emergency repairs and therefore this section of the tenants claim has not been dealt with at this hearing and is dismissed.

The tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. The tenants are entitled to a Monetary Order pursuant to s. 67 of the *Act* as follows:

Loss of quiet enjoyment due to smoke	\$50.00
Lock and door repair	\$683.00
Restoration company invoice	\$2,289.00
Heat and hot water	\$100.00
Filing fee	\$50.00
Total amount due to the tenants	\$3,172.00

Conclusion

I HEREBY FIND in favor of the tenants' amended monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,172.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

The tenants must use \$2,289.00 of this Monetary Order to pay the restoration company invoice.

I HEREBY ORDER the landlord to inspect the pipes under the sink and the garage door lock for security and make any necessary repairs within five days of receiving this decision.

The reminder of the tenants' application is dismissed without 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: March 17, 2014

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Residential Tenancy Branch

