



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC; RP; FF

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord make regular repairs to the rental unit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing package, by registered mail sent February 14, 2014. It was also determined that the parties exchanged their documentary evidence.

### **Issues to be Decided**

- Should the Landlord be ordered to make regular repairs to the rental unit?
- Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence, which was signed by the parties on December 5, 2013. This is a lease, starting January 1, 2014 and ending December 30, 2014. Rent is \$1,750.00 per month, due on the first day of each month. The Tenant paid a security deposit in the amount of \$875.00. The Landlord prepared a Condition Inspection Report on January 5, 2014, a copy of which was provided in evidence.

### **The Tenant gave the following testimony:**

The Tenant stated that there are deficiencies in the rental unit that were not evident when he first viewed it in December, 2013.

The Tenant testified that on the day he moved into the rental unit the carpets were wet, there were puddles of water on the floor and there was no heat in the rental unit. The Tenant stated that the fireplace was not useable; there was no oil in the furnace and no secondary heat source; a dog fence in the yard was falling down; and there were burns in the carpet that had been covered by the previous occupant's furniture. The Tenant submitted that the rental unit is an old house and that the wiring in the basement is not professionally done. The Tenant stated that the bulbs were changed, but the lights still don't work. The Tenant stated that he was a building contractor and land use consultant for 37 years and therefore has some familiarity with electrical issues.

The Tenant stated that he advised the Landlord about the defects and she said her boyfriend would do the repair work. The Tenant stated that the Landlord agreed to replace the carpets and to repair the fireplace. He said that he was really looking forward to having a fireplace and that he made that clear to the Landlord before he signed the tenancy agreement.

The Tenant testified that the Landlord's boyfriend was very rude to him. The Tenant asked that the Landlord's agents treat him with respect.

The Tenant stated that he seeks compensation in the amount of \$60.00 a day and an Order that the Landlord replace the carpets; repair the fireplace; remove the dog fence; and have a professional electrician repair the wiring in the basement.

The Landlord gave the following testimony:

The Landlord stated that she showed the Tenant the rental unit on December 6, 2013, and that the Tenant really liked the place so he signed a lease. The Landlord stated that she let the Tenant move in one day early. She stated she had just shampooed the carpets and that the floors were still wet when he moved in. The Landlord testified that she had just had a foot operation and was in pain, so she thought they could do a move-in inspection later, which the Tenant agreed to.

The Landlord testified that the previous occupants used electric heaters instead of the oil furnace and that the furnace must have been out of oil. She stated that just before the Tenant moved in, she had the fireplace inspected and was told that it could not be used unless it was repaired. The Landlord testified that she was told that it would cost about \$2,000.00 to repair it, so instead she purchased and installed a very nice electric fire place 3 weeks ago.

The Landlord stated that the dog fence is going to be removed on April 24, 2014.

The Landlord testified that she initially agreed to replace the carpets, but has since changed her mind. She stated that the Tenant was exaggerating about the state of the carpets and that the previous occupants covered the burn marks with an area rug. The Landlord stated that the carpets were approximately 10 years old.

The Landlord testified that “a few years ago” she had an electrician re-wire the basement and that there was nothing wrong with the wiring.

The Tenant gave the following reply:

The Tenant stated that the electric fireplace was neither nice, nor new. He stated it was a very small electric, used fireplace that must have cost about \$100.00. The Tenant stated that he was promised a working existing fireplace.

The Tenant stated that he did not agree that the condition inspection could be done later. He stated that the house was empty when he moved in and that the report should have been done that day.

The Tenant stated that some of the outlets in the basement do not function.

**Analysis**

With respect to the Tenants request for an Order that the Landlord hire a professional electrician to rewire the basement, I find that the Tenant did not provide sufficient evidence to prove this portion of his claim.

The Landlord testified that she will be removing the dog fence from the rental property on April 24, 2014. I Order the Landlord to do so. The broken down dog fence may be an eyesore, but I find its effect on the value of the tenancy is minimal and that the parties agreed that it would be removed “in the spring”.

The Landlord provided a “Condition Inspection Report” which she filled out on her own. It is not completed properly, but it does have notations on indicating that she agreed to:

Carpets replaced  
Fix fireplace New insert  
In spring fence removal  
Basement: 2 light bulbs, 1 light cover

The Landlord also confirmed during the Hearing that she had agreed to the items noted on the Condition Inspection Report.

Therefore, based on the Landlord's own testimony and the documentary evidence provided, I find that the Landlord agreed to replace the carpets at the beginning of the tenancy, to put in a new insert or fix the fireplace, to remove the dog fence in the spring, and to provide the Tenant with lighting in the basement. I also find that the existence of a working fireplace was a key factor in the Tenant agreeing to rent the rental unit.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, I find that the Landlord did not provide a working fireplace or replace the carpet and therefore did not comply with the terms of the tenancy agreement. **I Order that the Landlord repair the fireplace, or put in a new insert, and replace the carpet.**

I find that that the tenancy was devalued as a result of the Landlord's breach of the tenancy agreement; however, I find that the amount that the Tenant is requesting in compensation is unreasonable. The Tenant seeks \$60.00 per day until certain items are repaired. The rent is \$1,750.00 a month, or approximately \$58.33 per day. I find that an award of \$5.00 a day is reasonable and award the Tenant **rent abatement in the amount of \$150.00 per month** until the fireplace is repaired or a new insert is installed and new carpets are laid, as was promised by the Landlord.

**I award the Tenant the sum of \$600.00 (\$150.00 x 4 months). I further find that effective May 1, 2014, monthly rent is \$1,600.00, until the parties agree that the repairs to the fireplace and installation of new carpeting have been completed or the Landlord is successful in an application to have the rent reduction cancelled.**

The Tenant has been partially successful in his application and I find that he is entitled to recover the cost of the filing fee of **\$50.00** from the Landlord.

The Tenant has established a total monetary award of **\$650.00**. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$650.00 from future rent due to the Landlord. For clarity, rent for the month of May, 2014, will be \$950.00 (\$1,600.00 - \$650.00).

### **Conclusion**

**I Order the Landlord to remove the dog fence at the rental property by April 24, 2014.**

**I Order that the Landlord repair the fireplace, or put in a new insert, and replace the carpet. I Order that rent will be \$1,600.00 per month until this has been done.** If the parties cannot agree that the repairs are complete, or when they have been completed, it will be up to the Landlord to file an application to have the rent reinstated.

The Tenant is awarded rent abatement in the amount of \$150.00 per month for the months of January to April, 2014, totaling **\$600.00**. I find that the Tenant is entitled to recover the **\$50.00** filing fee from the Landlord. **The total monetary award in the amount of \$650.00 may be deducted from future rent due to the Landlord.**

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: April 09, 2014

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Residential Tenancy Branch

