



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDC, RP, FF

The tenant has filed an application seeking an order to have the landlord make repairs to the unit, site or property, an order to have the landlord comply with the Act, regulation or tenancy agreement, and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

This matter was originally scheduled to be heard on May 7, 2014. The tenant requested an adjournment to attend to an emergency in Europe; the landlord did not oppose the adjournment. The hearing was adjourned to this date. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

### Issue to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

### Background, Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenant must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in making a decision. All issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not

repeat each and every item, instead it will focus directly on the claims as made in the application.

The tenancy began in August 2002 and is ongoing. The tenants were obligated to pay \$3238.00 per month in rent. After having discussions with the tenant it became clear that his application for having the landlord comply with the Act, and conduct repairs were one in the same and I address them as such.

I address the tenants' claims and my findings around each as follows.

**Tenants First Claim** – The tenant stated that the heating system needed repairing. The tenant stated that it has been problematic since he moved in. The tenant stated that it's often too hot and that the only remedy is that they open the windows. The tenant stated that they have no control of the heating system and that the heating system should be retrofitted and upgraded. The tenant stated that the landlords have been very vague and less than forthcoming in explaining the issue and what the plan to repair it is. The tenant stated that he concedes that some repairs have taken place and that the air conditioning seems to be "holding up" but is concerned that when the cold weather comes the heat will be an issue again.

The landlord stated that the many repairs and upgrades have taken place over the past several months and new thermostats, actuators and necessary parts have been replaced. The landlord stated that they are considering doing a \$500,000.00 upgrade but that would require vacant possession of the building; something that they are hesitant to do. The landlord stated that all issues have been resolved at this time and that if any further issues arise they will act in a quick and responsive manner as they have throughout.

The tenant has concerns about the heating system for the upcoming fall but by his own admission acknowledged and conceded that the system is functioning as it should at this time. Based on the above and on the balance of probabilities I dismiss this portion of the tenants claim.

**Tenants Second Claim** – The tenant is seeking to have the video intercom system repaired. The tenant stated that since the video system has been installed it has not worked properly. The tenant stated it's just a simple video feed connection that needs replacing but the landlord refuses to make the repairs, instead makes excuses.

The landlord stated that the issue is a non-compatibility issue as certain cable providers do not work with this video system. The landlord stated that the buzzer and talk functions are still operating and that it's due to the tenants' provider that's caused the issue.

The tenant was unable to provide sufficient evidence to support his claim that there is not any compatibility issue. I accept the testimony of the landlord that the compatibility is the issue. Based on the above I dismiss this portion of the tenants' application.

**Tenants Third Claim** – The tenant seeks the repair to the parking system and \$3000.00 as compensation for not having functioned at all times. The tenant stated that the parking system is an unusual one. The tenant stated that the vehicle drives onto a platform and is lowered to a lower level similar to a hoist that you would find in a mechanical repair shop. The tenant stated that the problem has been ongoing for 12 years. The tenant stated that he has submitted copious amounts of e-mails, letters and phone calls to have the system repaired once and for all. The tenant is not confident that it works as it should and sometimes has parked his vehicle outside. In parking outside his vehicle has been vandalized three times. The tenant stated that the system should be completely overhauled and that he is entitled to \$3000.00 for all of the frustration it has caused his family.

The landlord stated that she did acknowledge that the system has had its issues but are trying desperately to repair it. The landlord stated that to compound the issue only one company services this type of parking system in all of Western Canada. The landlord stated that they have had the technicians attend and that all the issues have been resolved and no further repairs are required at this time. As for the compensation, the landlord stated that the issues are not as regular or severe as the tenant purports.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy 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.

Based on all the documentation and testimony before me, I do find that compensation is justified. However I do not agree with what the tenant is seeking. I find the appropriate amount of compensation is \$500.00.

The tenant is also entitled to the recovery of his \$50.00 filing fee.

### Conclusion

The tenant has established a claim for \$550.00. I order a onetime deduction from the rent due for October 2014. The rent payable for October 2014 is \$2688.00.

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: August 18, 2014

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Residential Tenancy Branch

