



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CIVL, FF, MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on June 16, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a 2 month Notice to End Tenancy?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenant testified he previously worked as a handyman for the landlord. He was approached by the landlord to take care of the house as the landlord was moving out of the country. He testified the agreement was that he would live in the basement for the discounted rent of \$500 per month (the actual rent at the time was \$1000 per month).

In exchange he would safe keep their belongings in the rental property and garage. He would rent the upper unit and collect rent on their behalf. He would email the landlord their mail; maintain the garden and clear snow in the winter and wold take care of minor repairs. He testified the agreement was that the landlord would pay him for major repairs.

The landlord disputed the tenant's version of the agreement. She agreed the tenant would pay \$500 per month. She said the market rent was \$1200 per month at the time. The tenant was responsible for renting the upstairs and collecting rent. He fixed things and bought new appliances as needed. He would also call in service technicians. In all cases he claimed his expenses, sent us invoices and settled all bills by deducting money from the rent. The landlord disputes the tenant would be paid extra without getting the prior approval of the landlord.

The tenant testified he was entitled to \$4000 for 3 emergency plumbing leaks that prevented major damage. The tenant's evidence of this claim was not satisfactory. He was unsure when they occurred. He thought the first one occurred in August 2012. He testified he did approximately 15 hours of work. The second time was approximately 6 months later and he did a similar amount of work. Finally there was a problem with a leak in the bathroom and he did a similar amount of work. He testified he did not send a bill as he was waiting for the landlord to return home to settle up. He did not obtain the prior agreement of the landlord to do the work. He did not bill the landlord at the time the work was done.

The landlord disputes this claim based on the following:

- The tenant never obtained our permission to do the job.
- In the last four years he told us about two plumbing works that he did in 2011 and 2013. In those cases he deducted all the money from his rent .
- The tenant first claimed the \$4000 after we had given him a 2 month Notice to End Tenancy
- If this was a large job, he could have called a plumber to fix this and bill the landlord
- If he wanted money he could have told us before the work or right after the job
- He already sent us an invoice for parts needed for this job in November 2013. If more money was due he could have told us.
- In all previous transaction the tenant always charged us on the same month for all that was due.
- In his email he claims about two plumbing incidents. Now he claims three incidents. was not able to provide

On May 31, 2014 the landlord served a 2 month Notice to End Tenancy on the tenant. This Notice set the end of tenancy for July 31, 2014.

Tenant's Application to cancel the 2 month Notice to End Tenancy:

The parties stated they have resolved the issue of when the tenant will be vacating and it was not necessary to consider the tenant's application to cancel the 2 month Notice to End Tenancy. As a result I dismissed the tenant's application to cancel the Notice.

Tenant's Application for a monetary Order

Analysis:

With regard to each of the tenant's claims I find as follows:

- a. After carefully considering all of the disputed evidence of the parties I determined the tenant has failed to establish a claim for the plumbing jobs. I prefer the evidence of the landlord to that of the tenant when in conflict. I do not accept the testimony of the tenant that the landlord agreed to pay him for large jobs without the need to get the landlord's consent before doing the work. I determined the conduct of the tenant in failing to submit invoices for these jobs at the time he did the work was inconsistent with his normal conduct and the tenant's version of the agreement. The tenant submitted invoices for materials he purchased and then deducted it from the rent as the work was done. This conduct is more consistent with the view that the tenant considered that whatever work he was doing on the plumbing was paid for by the landlord in the form of the substantial rent reduction he was receiving. The tenant failed to adequately explain why he only made this claim after the landlord served a 2 month Notice to End.

I determined the tenant failed to comply with the provisions of section 33 of the Residential Tenancy Act dealing with emergency repairs and he has no claim under those provisions. They provide as follows:

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The tenant failed to make an attempt to contact the landlord. In summary I dismissed the tenant's claim for \$4000 for plumbing repairs.

- b. The tenant claimed \$450 for the cost of cutting an infected tree and stump removal. He testified it took him 10 to 15 hours to complete this work which occurred in the summer of 2013. He did not bill the landlord at that time as he wanted to talk to the landlord in person when the landlord returned for the summer. The landlord decided not to return in the sum of 2013. The landlord disputes this claim. She testified the tenant never obtained her permission or agreement to cut the tree despite being in email contact on a regular basis. I determined the tenant failed to prove this claim. His conduct in not sending an invoice at the time is more consistent with an understanding that this work was part of the work he was to render for the discounted rent. This claim is dismissed.
- c. The tenant seeks a monetary order in the sum of \$400 for the cost of cutting overgrown trees. He testified it took 10 man hours to complete the work (2 people @ 5 hours). The work occurred in the spring of 2013. Again he failed to submit an invoice. His conduct in not sending an invoice at the time is more consistent with an understanding that this work was part of the work he was to render for the discounted rent. This claim is dismissed.
- d. I dismissed the tenant's claim of \$150 for the cost of cancelling a trip. The landlord has a legal right to serve the 2 month Notice to End Tenancy and the landlord is not responsible to compensate the tenant for the tenant's decision to cancel the trip.

Summary:

**I summary I determined the tenant has failed to establish a claim against the landlord and as a result I dismissed the tenant's application without leave to re-apply.**

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 15, 2014

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Residential Tenancy Branch

