



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, RR, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to: cancel a notice to end tenancy for cause; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee for the cost of the Application from the Landlords.

The Tenant appeared for the hearing and provided affirmed testimony as well as written and photographic evidence prior to the hearing.

There was no appearance for the Landlords and no submission of written evidence prior to the hearing. The Tenant explained that she had attempted to serve the Landlords personally with a copy of her Application and the Notice of Hearing documents at the Landlords' residence but was only able to speak to them on their balcony where she informed them that she was trying to serve them with paperwork relating to this hearing. However, the Landlords denied service by not coming to the door. As a result, the Tenant served the Landlords with the documents and her photographic evidence by registered mail on September 4, 2014. The Tenant provided a copy of the Canada Post tracking number as evidence for this method of service.

Section 90(a) of the Act provides that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by refusing or neglecting to pick up mail or use this as grounds alone to apply for a review of this decision. Based on the foregoing, I find that the Landlords were served the required documents for this hearing in accordance with the Act.

As a result, I considered the undisputed oral and written evidence of the Tenant in this decision.

The Tenant explained that the Landlord had given her a typed notice to end tenancy for unpaid rent on August 26, 2014 but this notice was illegal as it was not on the legal form as required by the Act. The Tenant explained that she was then issued with a proper notice to end tenancy for cause. A copy of these notices to end tenancy had not been provided by the Tenant in written evidence but the Tenant explained that the allegations made in the notice to end tenancy for cause were not true. However, the Tenant decided to vacate the rental suite on October 15, 2014 due to the notices.

As a result, there was no requirement for me to make a determination of the Tenant's Application to cancel the notice to end tenancy or reduce the Tenant's rent, as these are now moot issues. The hearing continued to hear the Tenant's monetary claim for compensation from the Landlords.

#### Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation for loss under the Act?

#### Background and Evidence

The Tenant testified that this tenancy started on August 1, 2014 on a month to month basis. A written tenancy agreement was completed but not provided in written evidence. Rent was established under the agreement in the amount of \$800.00 payable on the first day of each month. The Tenant paid the Landlords a \$400.00 security deposit at the start of the tenancy which is still held by the Landlords. The Tenant explained that the Landlords did not complete a Condition Inspection Report for this tenancy.

In oral evidence, the Tenant explained that when she took occupancy of the rental suite it was filthy and damaged. The Tenant testified that the walls and wood trim were damaged, the cooking appliances and kitchen sink were filthy, the bathrooms including the toilet bowl were unclean and smelt of urine, and the kitchen cabinets contained a thick layer of yellow grease. The Tenant testified that the Landlords had promised her the rental unit would be professionally cleaned but it was not. The Tenant provided photographic evidence to support her testimony. The Tenant explained that she spent 12 hours for the first three days cleaning the rental suite to a standard that made it bearable for occupancy.

The Tenant testified that in addition to this; the fridge was not working properly as it was freezing and spoiling their food which they had bought, the stove and burners did not work and this resulted in the Tenants having to eat out for the duration of the tenancy, and the toilet seat was broken.

The Tenant testified that during the onset of the tenancy, they experienced excessive noise from the residents in the property above them in the early hours of the morning which caused them sleep deprivation. In support of this, the Tenant provides a doctor's note which explains that the Tenant is experiencing stress as a result of this tenancy. The Tenant testified that the Landlords frequently entered their rental unit without prior written notice as required by the Act.

The Tenant testified that on August 7, 2014 she sent the Landlords a letter, which was provided in written evidence, explaining the above deficiencies with the tenancy and asked for resolution and rectification. However, despite the Tenant paying rent, the Landlords provided no resolution, only providing them with another fridge which also malfunctioned. The Tenant testified that the Landlord also failed to provide cable service and laundry facilities which were part of the tenancy agreement and that the cable service was not provided for the first two and half weeks into the tenancy.

The Tenant also provided further written letters to the Landlords asking for them to comply with the Act in entering their rental suite, noise disturbances and the lack of services promised under the agreement.

The Landlord was confused about the exact amount she was seeking from the Landlord in monetary compensation but explained that her Application was for one month's rent plus the return of the security deposit.

### Analysis

Section 32(1) of the Act requires a Landlord to provide to a Tenant a rental unit in a state of decoration or repair that makes it suitable for occupation.

Based on the oral testimony and the photographic evidence provided by the Tenant, I find that the Landlords failed to comply with Section 32(1) of the Act. I accept the undisputed evidence of the Tenant that cable and laundry facilities were included as part of the tenancy and that the Tenant was not provided with these services from the onset of the tenancy and there was a considerable amount of time that lapsed before these services were provided.

I find that the Tenant pursued a reasonable course of action requesting the Landlords to provide resolution to the matters documented in her letters and that the Landlords failed to respond or remedy the issues raised by the Tenant. I accept the undisputed testimony of the Tenant that the Landlords instead continued with their breaches of the

Act in entering the Tenant's suite without proper written notice pursuant to Section 29 of the Act, and restricting a non-essential service pursuant to Section 27 of the Act.

As a result, I find that the Tenant did experience stress in this tenancy as supported by the medical evidence and that the Tenant spent a considerable amount of her own time cleaning the rental suite to a reasonable standard.

Based on the above evidence which I considered on the balance of probabilities, I find that the Tenant is entitled to monetary compensation for loss under the Act. While the Tenant failed to provide evidence that could verify the losses claimed, such as invoices for food and restaurant meals and the cleaning supplies, Policy Guideline 16 to the Act provides that an Arbitrator can award an amount that is appropriate to a situation where it is not possible to place an actual value on the loss.

Therefore, based on the undisputed evidence provided by the Tenant that the Landlord breached the Act and that the Landlords continued with a course of action that resulted in a loss of peaceful and quiet enjoyment of the rental unit, I find that it is appropriate to award the Tenant one month's of monetary compensation in the amount of **\$800.00**. As the Tenant has been successful in her Application for monetary compensation, the Tenant is also entitled to recover the **\$50.00** filing fee from the Landlords pursuant to Section 72(1) of the Act. The parties are cautioned that the provisions of the Act that apply to both the Tenant and the Landlord in relation to the return of the security deposit are still in effect.

### Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order pursuant to Section 67 of the Act in the amount of **\$850.00**. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlord fails to make the payment.

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: October 22, 2014

