



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and the landlord both attended the hearing, each gave affirmed testimony, and the tenant was assisted by another person who acted as the tenant's agent, and also gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other and were given the opportunity to cross examine each other and the landlord's witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use and quiet enjoyment of the rental unit?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided, namely a portion of the rental unit?

### Background and Evidence

The tenant testified that this fixed term tenancy began on October 1, 2013 and expired on October 1, 2014, and the tenant still resides in the rental unit. Rent in the amount of \$460.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no

rental arrears. The landlord has collected a security deposit in the amount of \$250.00 which is still held in trust by the landlord.

The tenant further testified that there have been 2 previous dispute resolution hearings between the parties. As a result of the latest hearing, the tenant must vacate the rental unit on November 30, 2014.

The tenant has provided copies of receipts, utility bills, and a calculation of the claim, which consists of half of the rent for October, 2013 to July, 2014 in the amount of \$2,300.00 and \$647.00 for overpayment of utilities, for a total claim of \$2,947.00.

The tenant's witness testified that a hearing took place on June 11, 2014 for files 539337 and 539310 which resulted in a Decision of the director dated July 7, 2014. That hearing dealt with an application made by the landlord for an order ending the tenancy early and an application made by the tenant for an order cancelling a notice to end tenancy issued by the landlord as well as other relief. The tenant's application for a monetary order didn't get heard. The second hearing took place on September 30, 2014, under file numbers 540533 and 540129 and the tenant was ordered to move out on November 30, 2014 because the landlord is moving her daughter into the rental unit. Again, the tenant's application for a monetary claim didn't get heard due to lack of time. This is the tenant's re-application for a monetary order.

The witness further testified that there are 2 bedrooms in the rental unit, and the landlord had allowed the landlord's mother-in-law, the landlord's ex-spouse, and the landlord to use the rental unit from almost the beginning of the rental period up to the Decision of July 7, 2014. The director ordered the landlord to stop trespassing and to observe the *Residential Tenancy Act*.

Although the parties used the rental unit, no one actually stayed overnight, however the tenant was using both bedrooms. The rental unit is furnished, and the landlord's ex-spouse resides in the upper level of the rental property. On December 2, 2014, he removed everything from the 2<sup>nd</sup> bedroom in the rental unit, put it all in the other room, and put a lock on the 2<sup>nd</sup> bedroom advising the tenant that he could do what he wanted because it's his house. He also removed the lock from the door that separates the rental unit from the shared laundry area, and people would enter the rental unit, use the bathroom, at any time of the day; the door was completely unlocked and the landlord treated the entire rental unit as shared accommodation. Prior to that, the landlord's mother-in-law used the washroom, but the witness does not know who opened the door, but did hear a key in the lock.

The landlord appealed the July 7, 2014 Decision and the tenant was locked out of the second bedroom until August 5, 2014. Then the landlord put the lock back on the laundry room door and unlocked the bedroom door, but removed the bed, desk and chair. The rental unit is supposed to be furnished, and there is still none in that bedroom. However since then, the landlord has obeyed the ruling with respect to trespassing.

The witness also testified that the tenant paid \$40.00 per month, and an additional \$500.00, or \$700.00 in total during the tenancy for utilities. The tenancy agreement shows that heat is included in the rent but not electricity, and the rental unit is heated with electricity. During the previous hearings the landlord said under oath that the tenant's share is  $1/25^{\text{th}}$ . Further, the landlord never gave the tenant any bills until serving the evidence for that hearing. He calculates that the water, electricity and gas amounts to \$1,333.00 from October, 2013 to April, 2014, and dividing that sum by  $1/25^{\text{th}}$ , the result is \$53.00 which would be the tenant's share to the end of April, 2014. No bills have been received since then, however the landlord has provided some as evidence for this hearing, and the witness submits that the tenant should pay  $1/25^{\text{th}}$  of whatever those new bills are, but only for water. The witness questions the tenant's responsibility for hydro.

The witness also stated that the landlord's package contains evidence that has already been ruled on at the June 11, 2014 hearing, and pointed out that the floor-plan provided says, "newly added to amended lease agreement," and refers to the new tenancy agreement. Since the beginning of the tenancy, the tenant has not had use or quiet enjoyment of the rental unit until after the July 7, 2014 hearing.

The landlord testified that the parties agreed on shared accommodation and it was treated as such until September, 2013, and then the tenant disagreed. After the hearing in June, the landlord removed the tenant's belongings from that room because she had not paid for it. On September 25, 2014 the parties had a scheduled walk-through of the rental unit but the tenant didn't show up. It was ultimately re-scheduled for the 28<sup>th</sup> and the landlord had a diagram of the rental unit with her to show what areas were common or shared areas.

The landlord also testified that she made an error on the calculation for utilities, and stated that 5 people live on the rental property, so the tenant should pay  $1/5^{\text{th}}$  of the water, electricity and natural gas. The heat in the rental unit is a heat pump powered by natural gas and the hot water is also on natural gas. The tenant has only paid \$432.00 for utilities and rent has already been reduced for loss of the laundry facility.

The landlord further testified that there were 2 tenancy agreements. The tenant had told the landlord that she lost her copy, and the landlord made mistakes, such as not writing in the tenancy agreement that the tenant was renting one bedroom and the rest of the unit was shared accommodation. Another error was with respect to checking off the box beside "heat" showing that heat is included. The landlord re-wrote the agreement and made a copy for the tenant and the tenant said that she didn't understand the markings beside the security deposit and pet damage deposit, so the new tenancy agreement was prepared to clarify what the parties had verbally agreed to. The tenant reviewed it and agreed as long as the amount would be the same.

The landlord also submits that the previous Decision found that the tenant had rented the entire rental unit and not just one bedroom and therefore the rent amount is double because the tenant isn't paying for the space the tenant is using. Therefore, the tenant actually owes the landlord \$1,810.00. The landlord has provided a copy of an advertisement for a shared basement suite for \$460.00.

The landlord is not trying to take advantage of the tenant but the tenant is getting a really good deal for a brand new house; the landlord gave the tenant an option to rent the entire suite with both bedrooms but the tenant declined that option.

### Analysis

I have read the Decisions of July 7, 2014 and September 30, 2014 and it is clear that it has already been decided that the tenant rented the entire rental unit for \$460.00 per month. The landlord takes the position that since it's been ordered that the tenant have both bedrooms, the rent is actually double the amount. However, that is not what the parties agreed to, nor was it a finding in either previous hearing. The finding was that the landlord rented the rental unit to the tenant as set out in the tenancy agreement which specifies rent in the amount of \$460.00 per month.

Having heard the testimony of the parties, there is no doubt that the tenant did not have exclusive possession from December 2, 2013 to August 5, 2014, but did have enjoyment of at least a portion of the rental unit during that period. The tenant's witness also testified that the tenant didn't have exclusive occupation since the beginning of the tenancy on October 1, 2013 and the landlord did not dispute that. The Decision of July 7, 2014 sets out the sections of the *Residential Tenancy Act* that require a landlord to provide exclusive possession and a tenant's right to quiet enjoyment. However, the *Act* also states:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Since there is a finding that the landlord has not complied with the *Act*, I find that the tenant is entitled to compensation for that failure. The tenant has applied for compensation in the amount of half the rent from October, 2013 to July, 2014 and the landlord testified that the unit should collect double the amount for the use of 2 bedrooms, and therefore, I find that the parties agree that the loss or gain is worth one half of the rent for that period. The landlord's spouse or the landlord locked the 2<sup>nd</sup> bedroom on December 2, 2014 and then unlocked it in August after the July 7, 2014 Decision was received. Therefore, I am satisfied that the tenant has established a monetary claim of half the rent for December, 2013 through July, 2014, being \$230.00 per month for 8 months, or \$1,840.00.

With respect to utilities, I have reviewed the bills and the receipts provided by the parties. The tenant's witness testified that the rental unit is heated with electricity, and the landlord testified that it is a heat pump powered by natural gas and that the hot water is also on natural gas. The first tenancy agreement shows that electricity is not included in the rent, but heat is. I do not accept the second tenancy agreement with all of the markings on it which shows that neither heat nor electricity are included in the rent; the landlord testified that the tenant agreed to sign it as long as there was no monetary increase, and I find that there was. Therefore, the landlord is not entitled to charge the tenant for heat. However, water and electricity are not included, so the tenant pays for electricity but not for gas. The parties have provided several bills and receipts and I am satisfied from the evidence that the tenant has paid \$700.00 for utilities. The landlord testified that she made a calculation error during the previous hearing with respect to where to put the decimal point, and stated that the correct amount to be charged should be based on 5 people in the rental property so the tenant would pay one fifth. Based on the evidence, I find that one fifth of the electricity bills provided totals \$491.82 and one fifth of the water bills provided is \$181.90, for a total of \$673.72. Therefore, I find that the tenant has over-paid utilities by \$26.28.

I find that the tenant has established a monetary claim as against the landlord in the amount of \$1,840.00 for recovery of rent and \$26.28 for an overpayment of utilities, for a total of \$1,866.28.

I leave it to the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,866.28.

This order is final and binding and may be enforced.

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: November 28, 2014

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Residential Tenancy Branch

