



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

ERP, MNDC, RR

### **Introduction**

This hearing was convened in response to an application filed by the tenant on December 03, 2014 seeking Orders under the Residential Tenancy Act (the Act) as follows. The tenant testified that they seek:

- An Order for the landlord to make emergency repairs for health or safety reasons – Section 33
- An Order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided – Section 65
- Compensation for loss under the Act – loss of quiet enjoyment - Section 67

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided the tracking number as proof of the registered mail. The tenant also forwarded a quantum of evidence to this hearing which they testified was also sent to the landlord by regular mail and subsequently acknowledged by the landlord as having been received.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be Decided**

Should the landlord be ordered to make emergency repairs for health or safety reasons?

Should the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to the monetary amount claimed?

### **Background and Evidence**

This tenancy started June 02, 2014. Rent is \$1000.00 per month payable on the first of each month. The tenancy continues.

The tenant claims that the landlord has been neglectful in respect to executing needed repairs to the unit, as they previously agreed in a hearing conducted by the Branch on October 20, 2014: attended by both the tenant and the landlord. In addition, the tenant testified that since the hearing of October 20, 2014, and the onset of colder weather, they have come to the realization that the rental unit has no source of heating. The rental unit lacks any heating system, and as a result the tenant has had to purchase several small electrical heaters, of which they provided a photograph. Further, the tenant testified that since October 20, 2014, the kitchen cupboards, related in the previous Decision, have partially detached from their fixture and injured the tenant and their daughter.

The tenant provided a copy of the hearing Decision dated October 20, 2014. The Decision states as follows:

*The parties settled this matter and I have recorded the agreement pursuant to section 63(2) that he landlord agree to the following terms which all are to be completed by November 30, 2014:*

- a. The landlord will repair or replace the dishwasher and refrigerator,*
- b. The landlord will permit the tenant to have exclusive use of the entire front yard,*
- c. The landlord will repair the kitchen counter tops so that they are fastened correctly, and the kitchen cupboards so that they close properly,*
- d. The landlord will complete all renovations to the bathroom,*
- e. The landlord will provide doors for the laundry room, and*
- f. The landlord who has issued a two month Notice to End the Tenancy of the upstairs tenant GM, will enforce it so that the said tenant vacates by November 30, 2014.*

*Conclusion:*

*As a result of the settlement I have Ordered the landlord to complete items a. through f. by November 30, 2014. If the landlord fails to complete any of these items on time or at all the tenant has leave to make any applications regarding these matters. I have dismissed with leave to reapply all the tenant's applications herein.*

The tenant provided evidence that items **b.** and **d.** of the parties agreement have been completed, as well as the refrigerator of item **a.** The tenant testified that the balance of the agreement items has not been started and the landlord has told the tenant they will not attend to these items. In addition, the landlord has told the tenant they do not plan to proceed in respect to the circumstances and 2 Month Notice to End the tenancy of the *upstairs tenant* (GR - rather than GM). In respect to the *upstairs tenant*, the tenant provided evidence dated November 17 and November 24, 2014 that the upstairs tenant was charged with a total of 6 counts of assault and uttering threats toward the tenant, resulting in undertakings for release including a condition

not to contact or communicate indirectly with the tenant of this matter. The tenant testified that as of November 24, 2014, the upstairs tenant has abided by the bail conditions – as relevant to the tenant - and the tenant does not foresee additional issues. None the less, the tenant claims that the conduct of the upstairs tenant has resulted in a loss of their right to quiet enjoyment of the unit, which the landlord has failed to address or correct.

### **Analysis**

On preponderance of the evidence and on the balance of probabilities, I have arrived at the following findings.

I find that in the absence of the landlord and in the absence of any evidence from the landlord to the contrary, I accept the tenant's evidence.

**Section 28** of the Act states as follows:

#### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the circumstances presented by the upstairs tenant have resulted in a loss of quiet enjoyment for the tenant – a breach of the covenant of quiet enjoyment as

prescribed by Section 28 of the Act, which the landlord is purportedly unwilling to address. As a result, **I grant** the tenant compensation in the limited amount of **\$400.00**, without leave to reapply.

**I Order** that the tenant may deduct this amount of \$400.00 from February 2015 rent.

I find that the lack of a heating system precludes me from ordering emergency repairs - to a non-existent system. Therefore,

**I Order** that **the rent for February 2015 is reduced by \$250.00** to allow the tenant to obtain heating appliances to offset the lack of a heating system.

I find that the landlord has not made all of the repairs they agreed upon in the hearing of October 20, 2014, by the agreed date of November 30, 2014, and to this date remain incomplete. As a result,

**I Order that the rent from February 2015 onward is reduced by \$350.00 per month until such time that the landlord provides proof they have completed all repairs or provisions established by items a. , c. and e. within the settlement provisions of October 20, 2014. The landlord may make application for dispute resolution to have the original agreed rent re-established, the month following the aforementioned repairs or provisions are completed.**

Effectively, the aforementioned Orders result in the payable rent as follows:

February 2015 - **\$0.00** (\$1000 - \$400 - \$250 - \$350 = \$0.00),  
March 2015 onward - **\$650.00** (\$1000 - \$350 = \$650)

It must be noted that the tenant must not unreasonably impede the efforts of the landlord to make the ordered repairs or provisions set out.

As this hearing does not have benefit of the validity of the 2 Month Notice to End purportedly given to the upstairs tenant, I find that **item f.** within the settlement particulars of October 20, 2014 is not enforceable by way of this Decision.

### **Conclusion**

The tenant's application has been granted. The tenant may reduce rent as Ordered until such time an Arbitrator orders that the rent is re-established to the original agreed amount of the tenancy agreement.

**This Decision and is final and binding on both parties.**

*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: January 06, 2015

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Residential Tenancy Branch

