



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC RR

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To obtain a rent rebate for an essential service of heat not being provided contrary to section 27 of the Act;
- b) Reimbursement for furniture lost and moving expenses incurred due to lack of maintenance issues not being addressed in a timely fashion contrary to sections 32 and 33 of the Act; and
- c) To recover filing fees for this application.

Service:

The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution in December between December 3<sup>rd</sup> to 5<sup>th</sup>. The female witness testified she delivered it personally together with the evidence as the male tenant was not permitted on the property by the landlord after a Police incident; she said the landlord just snatched the documents which were in a legal sized envelope marked on the outside showing they were an Application for Dispute Resolution. I find the documents were legally served for the purposes of this hearing.

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

Has the tenant proved on a balance of probabilities that an essential service of heat was not provided and that the landlord's lack of maintenance caused them to lose their furniture and have to move? If so, to how much compensation have they proved entitlement?

**Preliminary Issue:** The spelling of the street in the dispute address was amended.

### **Background and Evidence:**

The landlord did not attend although served with the Application/Notice of Hearing. The tenant attended and was given opportunity to be heard, to provide evidence and make submissions. The tenant said he had a physical disability and his girlfriend was present

as a witness and assistant. He said he moved into a one bedroom cabin that was behind the main house on a property on October 10, 2014, rent was \$575 a month (prorated for October) and he paid a security deposit of \$287.50. He said there was no written tenancy agreement but the landlord promised him that the electric heat would be hooked up in the next week. Apparently there was only 60 amp service in the cabin and it had to be changed to 100 amps. There was a wood stove also in the cabin but the landlord told him he could not use it as it needed work to comply with insurance standards. The landlord never had the heating hooked up and it was very cold –down to -9 or -10 some nights.

The tenant and his witness also said they were away for a few days and upon return, they found that rodents had eaten the tenant's couch and loveseat. They told the landlord but he only supplied some poison which had no discernible effect. The tenant requested an exterminator and he agreed after an initial angry retort but no exterminator was ever hired. As a result, the tenant's couch and loveseat are ruined. The tenant said he provided evidence to the Residential Tenancy office today of photographs and estimates to replace the couch. He said it was maybe 3- 4 years old but he was unsure and the cleaning company said it could not be cleaned effectively because of rodent germs and smells being all through it. When asked why the evidence was so late, the tenant said he had served the landlord with it and the Application in time but did not know he had to send it to the Residential Tenancy Branch also until he called them yesterday. The Decision will be delayed until the evidence has been examined.

The tenant claims:

1. \$3135.97 for rent rebate due to no heat and to replace a couch and loveseat that is maybe 3-4 years old.
2. \$500 for moving expenses as he was compelled to move due to lack of heat and rodent infestation that was not addressed.

The evidence was received by facsimile in the office on January 15, 2015. It consists of an invoice from a furniture store (undated) and showing \$3135.97 for 7 items; in the sidebar, it lists a few items as armless recliner, LAF chaise, RAF power recliner. There are also a number of photographs showing a light coloured couch with stains and rat feces on the floor and kitchen counter.

### **Analysis:**

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are also enforceable between a landlord and tenant under a tenancy agreement

and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) of the Act.

Section 1 of the Act, defines "tenancy agreement" as follows:

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find the tenant's evidence credible that the landlord agreed to provide hydro service hookup for heating as without this, the tenant would have no heat in a cold climate in winter. I found the tenant to be forthright and honest in his description of the cabin with a wood stove that could not be used and 60 amp service which the landlord agreed to change to 100 amps for heating purposes but did not. With respect to non provision of hydro services for heat, I find that, under section 27 of the Act it states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. In this instance, I find that the deprivation of hydro or heat is not permitted under the Act. I accept the tenant's testimony that the hydro was not provided for an unacceptable period of time and that this negatively impacted the value of the tenancy. I find his sworn evidence credible that he paid rent for each of October, November and December and vacated January 1, 2015. I find him entitled to a rent rebate of \$100 a month for 3 months (total \$300) because he did not get what he bargained for in his tenancy because of the lack of the essential service of heat in the cabin.

I find the weight of the evidence is that the landlord failed to address the rodent problem in a timely manner as is his duty under section 32 or 33 of the Act. I find this further devalued the tenancy and created poor living conditions as illustrated by the photographs of rat feces throughout the home so I find him entitled to a further \$100 a month of rent rebate (total an additional \$300).

However, although the tenant said he lost a couch and loveseat due to this negligence and that he had an estimate showing the furniture would cost \$3,135.97 to replace, I find this estimate is not reliable for it is based on 7 items and the items are not shown to match the couch or loveseat which the tenant claimed is ruined. The tenant also said it was about 3-4 years old but did not provide any invoices to show its original cost or its actual age. Furthermore, I find from examining the photographs, the furniture is not ripped or torn by the rodents; it has some stains but I find insufficient evidence to

support the tenant's oral testimony that it cannot be cleaned. I find the tenant entitled to a nominal amount of \$200 to clean the furniture.

In respect to his claim for moving costs, he did not satisfy the onus of proof as I find insufficient evidence that he paid anyone for moving or how much was paid. I dismiss this portion of his claim.

I issue a Monetary Order in favour of the tenant in the amount of \$800 (300+300+200).

**Conclusion:**

The tenant is partially successful in the application and is granted a rent refund for loss of value of the tenancy and compensation for furniture totalling \$800 plus the filing fee of \$50. A monetary order is issued to the tenant.

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 15, 2015

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Residential Tenancy Branch

