



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

The tenant also indicated in her application that she sought an "other" remedy. The tenant could not provide details of any claim that was not wholly contained within her other claims. I note that the tenant's claim sets out that she seeks a total monetary amount of \$2,550.00. The

tenant could not identify amounts totaling \$2,550.00 and only identified amounts for her claim totaling \$759.18.

All parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

#### *Tenant's Service*

The tenant testified that she served the landlords with the dispute resolution package by posting it to the landlords' door. I explained at the hearing that this was not a permissible method of service for the tenant's application. The landlords consented to this method of service on the basis that they had actual service of the dispute resolution and as they wished to have all issues resolved at this hearing. On the basis of the landlords' consent, I accept the tenant's service of the dispute resolution package by posting the package to the landlords' door.

The tenant testified that she served her evidence to the landlords by putting the evidence in the landlords' mailbox on 15 February 2015. The landlords testified that they received this evidence. On the basis of this evidence, I find that the landlords were served with the tenant's evidence pursuant to section 88 of the Act.

#### *Landlords' Service*

The landlord JL testified that the landlords served the tenant with the dispute resolution package (including some evidence) on 12 February 2015 by registered mail. The landlords provided me with a Canada Post tracking number that showed the same. The tenant accepted service. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord JL testified that the landlords served the remainder of their evidence to the tenant by placing it in the tenant's mailbox on 17 February 2015. The tenant confirmed receipt of all of the landlords' evidence with the exception of one letter from a neighbour regarding the rat issue. On the basis of this evidence, I am satisfied that the tenant was served with the evidence pursuant to section 88 of the Act with the exception of the one letter. This letter will not be considered in evidence.

The landlord JL testified that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 2 February 2015 by posting the notice to the tenant's door. The landlords provided me with a signed proof of service that sets out the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

#### Preliminary Issue – Scope of Application

The tenant testified that she vacated the rental unit on 17 February 2015. The landlord ZG testified that when he attended the rental unit the tenant still had possessions there. I find that the tenant abandoned the rental unit on 17 February 2015.

As the tenant abandoned the rental unit on 17 February 2015, I find that the following issues are moot:

- the landlords' application for an order of possession for unpaid rent;
- the tenant's application for more time to make an application to cancel the landlords' 10 Day Notice;
- the tenant's application for cancellation of the landlords' 10 Day Notice;
- the tenant's application for cancellation of the landlords' 1 Month Notice; and
- the tenant's application for authorization to change the locks to the rental unit.

As these issues are moot, I dismiss, without leave to reapply:

- the landlords' application for an order of possession for unpaid rent;
- the tenant's application for more time to make an application to cancel the landlords' 10 Day Notice;
- the tenant's application for cancellation of the landlords' 10 Day Notice;
- the tenant's application for cancellation of the landlords' 1 Month Notice; and
- the tenant's application for authorization to change the locks to the rental unit.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlords' cross claim and my findings around each are set out below.

The landlords and tenant entered into a written tenancy agreement dated 11 June 2014. This tenancy began 1 July 2014. Monthly rent of \$1,400.00 was due on the first. At the beginning of the tenancy, the landlords collected pet damage and security deposits totalling \$1,400.00.

The landlords seek a total monetary order in the amount of \$2,109.18:

Item	Amount
February Rent Arrears	\$659.18
March Rental Loss	1,400.00
Recover Filing Fee	50.00
<b>Total Monetary Order Sought</b>	<b>\$2,109.18</b>

The tenant seeks a total monetary order in the amount of \$809.18:

Item	Amount
Food Replacement Cost	\$250.00
Disposal of Spoiled Food	100.00
Vet Bill	159.18
Pest Control	250.00
Recover Filing Fee	50.00
<b>Total Monetary Order Sought</b>	<b>\$809.18</b>

On 2 February 2015, the landlords served the tenant with the 10 Day Notice. The 10 Day Notice was dated 2 February 2015 and set out that the tenant failed to pay \$1,400.00 in rent that was due 1 February 2015.

On 5 February 2015, the tenant sent an email to the landlords setting out that she was deducting \$659.18 from her rent for costs associated with a rat problem, her dog's vet bill, and spoiled food. The landlord JL testified that on 5 February 2015 she received an electronic transfer in the amount of \$780.82 from the tenant. I was provided with an email that shows the same.

The landlord JL submitted that the tenant deducted amounts that were not in relation to emergency repairs and for which the tenant did not have authorization.

The tenant provided me with an email dated 25 January 2015 at 1004 that she sent to the landlords:

*I have explained again and again to you 5:00 does not work me for (sic). We have previously discussed this many times and agreed that 7:00 is the time that is convenient.*

*If you cannot make 7:00 p.m. on Monday, January 26, 2015, please contact me by email, as previously agreed on. ...*

*I most certainly do not appreciate, nor will I accept you here without required notice, and again, you cross the line of privacy by continuing to ring the door bell (sic) when I am trying to eat a meal, and obviously home sick. As I have stated previously, I find it futile trying to talk to you, and will only communicate to you in writing whenever possible. ...*

*There are now electrical issues regarding some outlets that need to be addressed.  
When you arrange to attend the premises after 7:00 p.m. ...*

### *Electrical Issues*

The tenant testified that on 25 January 2015 at 1620 she went into her deep freeze and found all of the contents spoiled. The tenant testified that she called each of the three phone numbers that she received from the landlords. The tenant testified that she left messages at the first and second phone numbers. The tenant testified that she was able to speak to the landlord GZ when she called the third phone number. The tenant testified that she explained the issue to the landlord and that the landlord disconnected the call. The tenant provided me with an email she sent to the landlords at 2054 on 25 January 2015. In that email the tenant notes *"I have many people willing to testify to how often the fuse box blows, and I previously sent you an email you chose not to respond to regarding the electrical system issue."*

The landlord JL testified that her family members were at home all day and that she did not receive phone calls or voicemail from the tenant. The landlord JL testified that the first time she heard that there were problems with the electricity was on 25 January 2015 by email. I was provided with a copy of the email the landlords sent at 1115 on 26 January 2015. In that email the landlords offered to have an electrician attend at the rental unit on either 26 or 27 January 2015 at 1900.

The tenant testified that she did not receive the landlord's email of 26 January 2015 because she was at work and attending classes. The tenant testified that the electricity issue represents a fire hazard and is a safety issue. The tenant testified that she arranged for an electrician to attend.

The tenant testified that she permitted the landlords to enter the rental unit when they arrived. The landlord GZ testified that he spoke to the electrician. The landlord GZ testified that the electrician told him that the breaker for the socket the freezer was plugged into had tripped. The landlord GZ testified that the electrician told him that the plug required replacement because it was worn.

The tenant testified that the landlords refused to allow the electrician to continue the work as the landlords wished to have their own electrician complete the work. On 28 January 2015, the landlord GJ emailed the tenant to tell her that the landlords were not going to use the electrician and that the landlords would not pay for any work he completed after that point.

I was provided with an invoice dated 3 February 2015 that the landlord supplied from an electrical company. The invoice notes the following description of services provided:

*Jan 26/15 – Arrived on site – there was an issue of a plug in the sunroom that tripped, it happened to have a small deep freeze plugged in (lost all inside). This plug was a GFI circuit tied in with all bath plugs (reset breaker) and told tenant to plug in freezer to an*

*inside plug. Someone installed a plug on a kitchen split circuit and did not cut the bar and on the same circuit had a splitter. (Removed jumper on receptacle and unplugged splitter from kitchen circuit) problem solved.*

The tenant played a voicemail message from the electrician. The electrician relayed to the tenant that the landlords did not want the electrician to finish the job because the landlords were not happy with the "situation" and wanted to use their own "people". The electrician stated "you've got some kind of landlord there".

The tenant filed a complaint with a safety authority.

The landlord JL testified that the safety inspector told the landlords that they could use any certified electrician to do the work. The landlord JL testified that she preferred not to use the electrician that the tenant had contacted.

The landlord JL testified that the old electrical sockets have been replaced; the old socket was still working, but needed to be upgraded. There were also other repairs that the inspector asked be completed in relation to insulation around lights. The landlord JL testified that the safety inspector indicated that these were repairs in the nature of maintenance and operations.

The tenant testified that she paid \$100.00 to have the spoiled food removed. The tenant provided me with a receipt dated 6 February 2015 for junk removal in the amount of \$100.00. The tenant provided me with a handwritten account of the contents of her freezer along with replacement costs. The items total \$128.82.

### *Rat Issues*

The tenant testified that she reported a rat problem to the landlords. The tenant testified that she knew that there was a rat problem because her mechanic told her that damage to her car was caused by rat bites on a belt. The tenant testified that she parks her car in the driveway. The tenant testified that the landlords set up cheap unbaited rat traps. The tenant testified that her dog experienced intestinal issues from rat droppings and that the only place that her dog goes off leash is in the back yard. The tenant testified that she has never seen a dead rat.

The landlord JL testified that the rental unit is part of a duplex. The landlord JL testified that she spoke to the occupant of the other duplex and was told by that occupant that he had not observed rats on the residential property. The landlord JL testified that she has never seen evidence of rats and that no rat carcasses have been removed from the property to her knowledge.

The tenant provided me with a receipt from a pest company dated 21 January 2015. The receipt is for \$250.00. The receipt advised that the pest company will provide services for 100 days and up to 6 visits.

The tenant provided me with a report from a pest company dated 30 January. The report notes to see reverse; however, I was not provided with a copy of the reverse by the tenant.

The tenant provided me with a report from a pest company dated 7 February 2015. The report notes that the pest activity is "*Rats – Exterior*". The report notes "*3<sup>rd</sup> visit – Checked bait station in rear shed. Feeding on 2nd visit none on 3<sup>rd</sup> visit.*"

The tenant testified that she is studying epidemiology.

The tenant provided me with a receipt from her veterinarian dated 20 January 2015. The receipt notes that the vet provided the following services:

- an antibacterial and anti-protozoal;
- a probiotic;
- an examination; and
- low fat pet food.

The tenant testified that she has complained to both the health authority and safety authority about the rental unit. The tenant provided me with many emails between her and the landlords. The relationship between the parties is acrimonious. The relevant portions from the emails have been included above.

The tenant had additional complaints regarding a smoke detector battery, the condition of the sunroom, the next-door neighbour's use of marijuana, the amount of contact from the landlords, the landlords' child accompanying the landlords on inspections, and allegations that the rental unit was formerly a marijuana "grow op" that are not within the scope of the tenant's current application.

### Analysis

The tenant seeks recovery of the cost of pest remediation. The only repairs for which a tenant may be reimbursed under the Act are those that are agreed to by the landlord in advance or those that are emergency repairs.

Section 33 of the Act describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

I find that the tenant undertook these steps at her own initiative. Remedying a rat infestation is not an “emergency repair” within the meaning of the Act. Accordingly, the tenant is not entitled to recover the cost of these repairs. This portion of the tenant’s claim is dismissed without leave to reapply.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant’s duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenant claims that she incurred losses and expense in relation to the landlords’ failure to maintain the electrical system. The tenant provided me with an email sent the morning of 25 January 2015. In that email, she notes that there are issues with some outlets. The tenant provided me with a second email she sent the evening of 25 January 2015. In that email, she notes that the breaker repeatedly tripped.

I find that the tenant had knowledge that the outlet she had plugged her freezer into was unreliable. I find that by continuing to use that outlet, the tenant failed to mitigate her losses. I find that the tenant is not entitled to recover the costs of her spoiled food or its disposal as the loss was completely avoidable.

The tenant testified that the rat infestation led to her dog’s illness and the vet bill. I was not provided with any evidence from the dog’s vet that the dog’s condition related to exposure to rats or rat excrement. The tenant testified that she is studying epidemiology. I find that the tenant has provided insufficient evidence in respect of her expertise in order for me to consider that she has any special knowledge in respect of rat-vector disease. I find that the tenant has failed to prove that the vet bill results from any failing on the landlords’ part.

As the tenant was not entitled to deduct any amount from rent, the landlords are entitled to the remainder of February’s rent in the amount of \$659.18.

The landlords’ have applied for a rental loss for March. The landlords’ application was filed 12 February 2015 and was heard 27 February 2015. At the time of the application and the hearing,



it was premature for the landlords to claim for March's rental loss. As that claim was premature, it is dismissed with leave to reapply. This is not an extension of any applicable deadline.

As the tenant has been unsuccessful she is not entitled to recover her filing fee for this application. As the landlords have been partially successful, they are entitled to recover their \$50.00 filing fee from the tenant.

The landlords applied to keep the tenant's security and pet damage deposits. I allow the landlords to retain \$709.18 from the tenant's deposits in satisfaction of the monetary award. The value of the tenant's security and pet damage deposits are reduced to \$690.82.

The landlords and tenant should familiarize themselves with their rights and obligations regarding security deposits, which are contained in sections 38 and 39 of the Act. Residential Tenancy Policy Guideline, "*17. Security Deposit and Set off*" may also be of assistance to the parties.

### Conclusion

The tenant abandoned the rental unit on 17 February 2015.

The tenant's application is dismissed without leave to reapply.

The landlords' application for an order of possession for unpaid rent is dismissed without leave to reapply.

The landlords' application for a rental loss for March 2015 is dismissed with leave to reapply.

I issue a monetary award in the landlords' favour in the amount of \$709.18. To implement this award, I order the landlords to withhold \$709.18 from the tenant's security and pet damage deposits. The value of the tenant's security and pet damage deposits is reduced to \$690.82.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 04, 2015

---

Residential Tenancy Branch

