



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, ERP, RP, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for emergency and other repairs – Section 32; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the outset of the hearing counsel for the Landlord requested an adjournment to an in person hearing. Counsel indicated that credibility was an issue. The Tenant did not consent to an adjournment noting the need for finality.

Rule 6.4 of the Rules of Procedure provide the following criteria that must be applied when considering a party’s request for an adjournment:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [fairness, efficiency and consistency];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

Although credibility may be an issue in this dispute, credibility may generally be considered an issue in all conference call hearings and there is nothing to suggest this dispute is significantly different than others. Considering that the Tenant's application is in relation to repairs to the unit, credibility alone does not outweigh the prejudice to the Tenant that would occur from an adjournment. I therefore decline to adjourn the hearing to a face to face hearing.

#### Issue(s) to be Decided

Is the Tenant entitled to an order for repairs?

Is the Tenant entitled to the monetary amounts claimed?

#### Background and Evidence

The tenancy started on August 15, 2014 for a fixed term to end August 15, 2015. Rent of \$1,650.00 is payable monthly on the first day of each month. No move-in condition inspection and report was completed.

The Tenant states that there are no emergency repairs to be made. The Tenant states that shortly after the onset of the tenancy mold was discovered in the shared laundry area that is not a part of the Tenant's rental unit but is otherwise attached to the unit. The Tenant states that she informed the Landlord about the mold but nothing has been done. The Tenant provided photos of the area. The Landlord states that in January 2015 a contractor confirmed the presence of mold but that the Landlord is waiting for the rain to stop and for the lower tenant to remove articles in the area. The Landlord agrees to start remediation of the area no later than May 22, 2015.

The Tenant states that rodents are present in the unit despite a pest control company attending with traps. The Tenant states that holes around the car port need covering. The Landlord states that the Tenant needs to clean the car port in order for the repairs to take place.

The Tenant agrees to clean the car port area no later than May 17, 2015 and specifically the following:

- Removal of all garbage and debris inside and outside the carport;
- Sweep out the carport;
- Ensure tools and supplies are on the shelves; and
- Remove tires temporarily to allow access.

Given the Tenant's agreement to clean the area, the Landlord agrees to have a pest control company return to cover the holes no later than May 24, 2015.

The Tenant states that the patio is damaged and that this damage also affects the roof of the carport. The Landlord agrees to have a contractor attend the unit by May 20, 2015 to inspect the areas and provide an estimate for any repairs needed and such repairs will be completed as soon as is reasonably possible.

The Tenant states that at move-in the Landlord promised to provide a new stove and dishwasher to the Tenants. The Tenant states that without the Landlord's permission they installed their own stove and left the old one in the garage. The Tenant claims compensation for the stove. The Landlord states that there was no agreement to replace the stove as the existing one had only been purchased about 2 or 3 years old. The Landlord states that the stove was purchased used and does not know the age of the stove. The Landlord states that the old stove is now damaged.

The Tenant states that the walls of the unit were damaged at the outset of the tenancy the Landlord told the Tenants that they could paint the walls. The Tenant states that the bathrooms, kitchen cupboards, hallway and stairwell were painted by the Tenants. The Tenant states that the Landlord was not asked to pay for any costs for the painting when it was agreed that the Tenants could paint. The Tenant claims the costs of painting.

The Tenant states that they made other repairs to the unit without the agreement of the Landlord after the Landlord failed to make the repairs upon their numerous requests. The Tenant claims the costs of the repairs. The Tenant states that the unit including the carpet was

dirty at move-in and that the Landlord had agreed to provide a clean unit. The Tenant states that no discount on the rent was requested at the time.

The Landlord states that carpets had been cleaned when the hardwood was placed on the floors. The Landlord states that the unit was clean at move-in. The Landlord states that the walls has only a few small holes and some scribbles but that the Tenants were allowed to move in early without paying rent in exchange for the painting and cleaning. The Landlord states that the patch marks in the Tenant photos are the patch marks from the Tenant's painting preparation. The Landlord states that the Tenants moved in on August 3, 2015. The Tenant states that they did not get the keys to the unit until August 10, 2015.

The Tenant states that there was no heat in the unit between October 16 and December 4, 2014 and that the Tenant informed the Landlord on or about October 17, 2014. The Tenant also states that they chose not to use the heat during this period as the ducts were filled with smoke and feces. The Tenant states that her son has allergies. The Tenant states that the ducts were cleaned on November 27, 2014 but that the furnace was not working after this for another 2 to 3 days. The Tenant states that when the Tenant informed the Landlord the furnace was repaired. The Landlord states that the Tenants did not inform the Landlord about the duct problems and that as soon they did the ducts were cleaned. The Landlord states that the Tenants did not inform the Landlord about the furnace not working and that when they did the furnace was immediately repaired on December 4, 2014. The Landlord states that no alternative heat source was provided to the Tenants for the few days that it took to repair the furnace.

The Tenant states that the Landlord brought her boyfriend to the unit, that the boyfriend was verbally abusive and aggressive and that the Tenant asked the Landlord not to bring her boyfriend to the unit again however the Landlord continued to bring her boyfriend. The Tenant states that she experienced panic attacks and stress from these visits and claims \$400.00. The Tenant provided medical information indicating the occurrence of panic attacks and that the Tenant has recently experienced increasing stress due to difficulties with her Landlord. The Landlord states that the Tenant is exaggerating and denies that the boyfriend was abusive or aggressive. The Landlord states that the Tenant never asked the boyfriend to leave and that the boyfriend was never in the unit. The Landlord states that she attends rental units with her

boyfriend for safety while picking up rents. The Parties agree that from this date forward all rent will be paid by post-dated cheques.

The Tenant states that she is required to place the utilities in her name and that it includes the utilities for the lower suite. The Tenant requests that the Landlord put the bill in the Landlord's name. The Landlord states that it was agreed that the lower tenant's share of the utilities would be 1/3 of the total bill and that the Landlord pays this amount to the Tenant.

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the agreement of the Landlord to remediate the mold problem, and to inspect the deck for repairs, I dismiss the Tenant's claim for compensation with leave to reapply should the Landlord fail to act as agreed. Given the agreement of the Tenant to clean the carport thereby facilitating the Landlord's agreement to place rodent barriers at the unit, I dismiss the Tenant's claim with leave to reapply should the Tenant fulfill its agreement and should the Landlord fail to act as agreed.

Accepting that the Landlord was reasonably stopped from work on the patio over the winter and spring and considering the Landlord's agreement to inspect the patio by May 20, 2015 and to make required repairs as soon as is reasonably possible, I dismiss the Tenant's claim with leave to reapply for compensation should the Landlord fail to act as agreed.

As the Tenants have not shown any loss in relation to a stove, I dismiss this claim for compensation. Given the Tenant's evidence that no amount of compensation was agreed upon in exchange for the Tenants cleaning or painting of the unit at the onset of the tenancy, the Landlord did not agree to the Tenant's repairs and considering that the Tenants were given

possession of the unit without any rental cost for at least 5 days, I find that the Tenant has not substantiated that the Landlord breached an agreement or caused any loss. I therefore dismiss the claims for repairs, cleaning and painting.

Accepting the Landlord's believable evidence that the ducts were cleaned as soon as the Landlord was notified of the problem I find that the Tenant has not substantiated that the Landlord failed to act to repair a problem. However given the undisputed evidence that the Tenants did not have any heat for approximately 3 days and considering that the Landlord did nothing to ensure heat to the unit such as temporary heating units, I find that the Tenant has substantiated a nominal entitlement of **\$100.00**.

Although I accept that the Tenant suffers from anxiety and panic attacks and is stressed by the dispute with the Landlord, I accept the Landlord's evidence that the boyfriend has not been in the unit or that the Landlord has abused its practice to pick up rent cheques from the Tenants. I find therefore that the Tenant has failed to provide sufficient evidence to show on a balance of probabilities that the Landlord breached the Act or tenancy agreement. I also consider that the agreement on post-dated rent cheques sufficiently resolves the issue of the presence of the boyfriend near the one Tenant. I therefore dismiss the Tenant's claim for \$400.00.

Based on the undisputed evidence that the Tenant has been required to have utility bills in its name to cover the utilities for a unit that the Tenant is not renting, I find that this term of the tenancy agreement is unconscionable and I order the Landlord to immediately put all the utilities for the building in the Landlord's name.

Although the Tenant has not been successful with its claims for compensation, considering that the application otherwise had merit, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$150.00**. The Tenants may deduct this amount from future rent payable in full satisfaction of the claim. Noting that the tenancy agreement does not name the first named Tenant in the application as a Tenant, I decline to make a monetary award to include the first named Tenant.

### Conclusion

The Parties have reached agreement to resolve the requested mold, rodent and patio repairs.

I grant the Tenant an order under Section 67 of the Act for **\$150.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 15, 2015

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Residential Tenancy Branch

