



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, PSF, LRE, OPR, MNR, MNSD, FF

### Introduction

In the first application the tenants applied for a monetary award for a variety of alleged deficiencies in the home, for an emergency repair order, an order that the landlord provide services or facilities, and order suspending or setting conditions on landlord entry and a rent reduction.

In the second application the landlord sought an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent and for a monetary award for unpaid rent.

This matter came on for hearing on April 17, 2015. At that hearing, due to time limitations, only the order of possession and rent issues were addressed. The tenants' claim was adjourned to this date.

After the first hearing, by way of Interim Decision, the landlord was granted an immediate order of possession and a monetary award for \$2250.00 in unpaid rent and recover of the \$50.00 filing fee. The issuance of a monetary order was suspended pending the determination of the tenants' claim.

By the date of the second hearing the tenants had vacated the premises pursuant to the order of possession. Thus, only their monetary claim remained to be considered.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenants are entitled to monetary compensation?

### Background and Evidence

The rental unit as an old three bedroom farm house, constructed in perhaps the late 1930's. It is located on about an acre of land. There are outbuildings near the home. They are a white shop, a barn, a storage shed and a pump house for the water well.

The well also provides water to a neighbour's home.

The tenancy began in December 2012, initially for a six month fixed term and then month to month. The rent has always been \$900.00 per month. The landlord received a \$450.00 security deposit.

There is a written tenancy agreement. It shows that the tenants had use of the storage shed but the landlord reserved for himself the use of the shop and barn unless the tenants wished to use the mower or other equipment stored in the barn.

The agreement shows that the tenants were responsible for their own electrical usage. There was a meter attached to the home. The meter also registered electrical usage for the shop, the barn, perhaps the storage shed and for the pump house. The agreement provides that the tenants were responsible for keeping the temperature above freezing in the well pump house (by use of a light bulb or bulbs in the structure) and in a crawlspace below the home (by use of a space heater located there).

The particulars of the tenants' monetary claim were not well set out in the application. In an attached statement signed by both tenants the particulars were described as follows:

We are asking to be reimburse for having the landlord not supply adequate water, smoke alarms, vented air fans in the bathrooms kitchen and laundry, dangerous oil furnace, dangerous wiring to out-buildings (barn, shop#1, shop#2), electrical heaters with no thermostats, hardwired stove, reimburse for supplying own appliances (cloths dryer, cooking stove, fridge) and water as well as some electrical usage we provided to the landlord for neighbors water and electrical usage for barn and large shop. We feel we should be compensated for the humiliation, the landlord has put us through, the time we have lived at ...

The tenants agreed that this sets out the ambit of the claim and it was used as a guide during the hearing.

The tenants' chief claim involved the tap water in the home. They say it was not suitable to drink, that it contained sediment and that it smelled. The tenant Mr. McN. testified that the water caused his skin to itch.

The tenants state the house does not have any ventilation. They say the roof has no vents and the windows do not open.

The tenants say the front door does not lock properly because it has only a "skeleton key" type lock.

The tenants say there is black mold in the cupboards, in the bathroom and on the outside wall of the home.

The landlord recently had the room redone, applying a metal roof over the old shake roof. The tenants say that as a result, insulation is now drifting down into the home and causing them health problems.

The tenants allege that the electrical wiring in the home is somehow unsound and that fuses keep blowing. They say the bedroom light goes on and off when one strikes the wall.

The tenants say that the landlord failed to repair a fridge in a timely manner and that they were required to purchase their own fridge. They say that they had to bring in their own stove as well. They complain that there is no ventilation for the stove or for either of the bathrooms in the home.

The tenants also relate an incident involving a letter from a local credit union directing them to clean up the yard in order to satisfy an insurance requirement.

The tenants say they should not have had to pay for the electrical usage for the shop or the barn or the shed or the well pump.

They complaint that they did not receive proper notice of roofers coming onto the property to redo the roof in 2014.

The tenant wished to raise a variety of complaints that have occurred since their application was brought in March 2015 and particularly involving the move-out between hearings. As these items had not been properly particularized in the claim or any amendment to the claim, I declined to hear them. The tenants are free to make a fresh application in that regard.

The tenant Mr. McN. complained that the landlord called him about overdue rent during the Christmas of 2014 and that he was humiliated by it in the presence of his family.

In response to the evidence of the tenants, the landlord gave a detailed account of how he calculated the electrical usage for the well pump over the two years of tenancy and how he rebated the tenants for half that usage cost each year by a reduction of rent, collecting the other half from the neighbour who uses the same well.

The landlord testified that the water was suitable to drink and that the smell was a hydrogen sulfide smell that posed no risk to health. He says the tenants were fully aware of the water quality before they rented. He produced a statement from the neighbour sharing the well that she had used the water for all purposes, including drinking, for many years.

He says that the shop and barn outbuildings do not have heat and very rarely if ever during this tenancy has a light been switched in either building, so there has been little if any electrical usage because of them.

The landlord denies the tenants had to buy a new fridge. He says he received a call about the fridge and that he arrived with a replacement within two days, however the tenants had already brought in their own fridge. He says he nevertheless gave the tenants a \$100.00 credit. His replacement fridge is stored in the shop on the property.

The landlord testified that the tenants did not need a new stove. Rather, he said, they had their own stove and clothes dryer sitting under a tarp, exposed to the elements and decided to move them into the house and use them. For that purpose, in December 2014, the landlord installed an appropriate stove plug for them.

The landlord denies there are any air quality issues in the home.

In regard to the door lock, the landlord referred to a photo supplied by the tenants to show that though the front door had a "skeleton key" set up, the inside of the door had an old "deadbolt" apparatus to secure it. He says the front door is seldom used by anyone.

### Analysis

I have considered all the evidence presented at the hearing, though I may not refer to it all in this decision.

Perhaps the most striking aspect of the evidence is the lack of any formal complaint to the landlord about any of the items raised by the tenants at this hearing until early March 2015. It is reasonable to assume that had conditions been as alleged, the tenants would have made some complaint earlier.

The tenants' position also suffered by their decision to adduce as their evidence a written statement from the previous tenant of the home. The statement was contained

in the landlord's material but was not entered as evidence by him. Despite being warned about the effect of adopting that evidence as their own, they insisted and the statement was read. It showed that the previous tenant had lived there for three years with his wife and four children and had no major problems. The statement says that the landlord was very attentive and took care of any problem right away. The previous tenant indicates that he and his family enjoyed living there. They were considering moving back to the area and had wanted to contact the landlord to see if they could rent the home again.

The tenants also insisted on adducing as part of their evidence an audio transcription made by the landlord on the occasion of his attendance to serve documents; the 10 day Notice to End Tenancy, I suspect. The recording had been included in the landlord's evidence material but not adduced by him as evidence at that point in the hearing. The tenants were warned that the evidence would be taken as their evidence and could not be disavowed them. However, they insisted.

The recording shows the tenant Mr. McN. to be very uncivil to the landlord. During the portions of the recording where the landlord could be heard to speak without being interrupted and shouted at by the tenant, it is made clear that the stove was working properly, that the tenants had been reimbursed for electricity for the well pump, that the landlord had offered to provide a replacement fridge, that he had given the tenant's a week's notice of the re-roofing project, that he had no idea the tenants had any health concerns about the home and that the tenant's had told him the mould in the bathroom was not a problem.

Mr. McN. explained that his behaviour on this occasion had been caused by his failure to take his medication for bipolar disorder. He explaining that in such situations he had difficulty controlling his mood.

I do not find this a particularly reasonable excuse. The tenants adduced a number of video recordings they had made. One (USB stick #1, video #11) shows the landlord attending the property to secure the cover on an abandoned well near the home. The video shows the tenant Mr. McN. to again be abusive, confrontational and provoking. The landlord is seen to be patient and accommodating, refusing to be baited by the tenant.

I find as a fact that from the commencement of the tenancy in December 2012 until March 2015, when the landlord began pressuring the tenants for rent, the tenants made no significant complaint to the landlord about any of the items claimed in this dispute. That

lack of complaint I find to be an indicator that the items claimed were not of particular significance to or serious for the tenants.

In regard to the water quality, I find that the tenants were aware from the start of the tenancy that the water had a rotten egg odour and accepted it. I accept the evidence of the neighbour that the water from the well was suitable for all purposes.

I dismiss the tenants' claim regarding lack of smoke alarms. The landlord was not required to provide them and the tenants had not suffered any damage or loss by their absence.

I dismiss the tenants' claim for compensation for lack of vents. They rented an old farmhouse without vents. The landlord was not required to supply them. There is no evidence of loss or significant inconvenience by their absence.

I dismiss the tenant's claim for compensation because of a "dangerous oil furnace." There is no evidence to substantiate such a claim or proof of any loss or damage.

The tenants have not shown there was any "dangerous wiring" anywhere in the home or elsewhere. I dismiss this item of the claim.

The evidence shows that the electrical heaters did, in fact, have thermostats. The evidence does not show, on a balance of probabilities, that the thermostats were defective.

The evidence indicates that the stove supplied with the home may have been "hardwired" without a normal plug and socket. The tenants have not shown that they somehow suffered any damage or loss or cost of repair as a result and I dismiss this item of the claim.

I dismiss the tenants' claim for supplying their own fridge, stove and dryer. I find the landlord did supply a replacement fridge in a timely manner. I accept the landlord's evidence that it was the tenants' decision to use their own stove and dryer and not because the landlord's appliances were defective.

I find that the tenants have been reasonably compensated by the landlord for the neighbour's share of the cost of electricity for the well pump and I find that if any of the outbuildings might have used electricity it would have been insignificant. I dismiss these items of the claim.

I dismiss the tenants' claim for allegedly being humiliated by the landlord. The tenants had not paid the rent. The landlord was entitled to contact them to be paid.

### Conclusion

The tenants' claim for repairs, limiting landlord access, providing services or facilities and a rent reduction are all now moot because the tenancy had ended. Their claim for monetary compensation is dismissed.

The landlord was issued an order of possession after the last hearing and a monetary award of \$2250.00 for unpaid rent plus the \$50.00 filing fee. I authorize him to retain the \$450.00 security deposit in reduction of that award. There will be a monetary order against the tenants jointly and severally for the remainder of \$1850.00.

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 13, 2015

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Residential Tenancy Branch

