



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, OLC, RP, RR, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order; orders compelling the landlord to comply with the Act, regulation or tenancy agreement and to make repairs to the rental unit; and an order allowing the tenant to reduce past or future rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard. The owners of the rental unit called from Taipei. During the hearing the owners' telephone connection was interrupted. The hearing was stopped until they were able to call back into the conference call.

The tenant had sent the application for dispute resolution, notice of hearing and evidence package to the respondent by registered mail. According to the records of Canada Post the item was returned unclaimed. The tenant's evidence package consisted of a copy of an undated letter sent to the respondent and seven photographs. In the hearing the landlord's lawyer advised that he had received a copy of the letter from his client and he referred to it during the course of his cross-examination of the tenant.

When I asked how the landlord knew about the hearing the tenant replied that she had sent him an e-mail advising him of the hearing.

The definition of "landlord" in the *Residential Tenancy Act* includes the owner of the rental unit and the owner's agent. Section 89(1) provides that an application for dispute resolution may be served on a landlord by many means including sending a copy by registered mail to the address at which the landlord resides or the address at which the person carries on business as a landlord. Section 90 provides that documents served by registered mail are deemed delivered on the fifth day after they are mailed. Evidence may be served in the same manner as an application for dispute resolution. Although the photographs were served in accordance with the *Act* and were included in the evidence it is the testimony of the parties that has been given the greatest weight in the preparation of this decision.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary order and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?
- Should the rent be reduced and, if so, in what amount?

### Background and Evidence

This tenancy commenced October 1, 2014. There is a written tenancy agreement, which was not filed in evidence. The tenant said the tenancy is for a six month term, to continue thereafter as a month-to-month tenancy. The landlord said the tenancy is for a one year term, to continue thereafter as a month-to-month tenancy. The tenant said a move-in inspection was not conducted and a move-in condition report was not completed. The landlord said both were done. The parties did agree that the monthly rent was \$2000.00 and was due on the first day of the month. They also agreed that the tenant paid a security deposit of \$1000.00.

The rental unit is a two bedroom, two bathroom apartment style condominium. It is about 1200 square feet in size.

Both the female landlord and the tenant testified that the tenancy agreement specified that storage was a facility included in the rent. For the first two months a storage space was not made available to the tenant and she used a portion of the second bedroom for storage. The tenant's 13 year old daughter stays with her mother three nights a week and this was her bedroom. After two months the female landlord provided the tenant with storage space in the landlord's storage locker located in the neighbouring building. The evidence is that the space provided, although shared, is large enough for the tenant's requirements. In her letter to the landlord the tenant claimed \$400.00 as compensation for the lack of a storage space and the resulting inconvenience to her daughter.

The tenant testified that when she moved in she noticed that the refrigerator was not functioning properly and was freezing food. She told the female landlord who had a serviceman attend. A part had to be replaced. The refrigerator was fixed within a month and has worked fine since. In the letter sent to the landlord the tenant claims \$800.00 for loss of food and the cost of eating out. No other detail or documentation regarding this claim was provided.

The tenant testified that she told the landlord from the beginning of the tenancy that the dishwasher did not work. The landlord said she received a complaint from the tenant at the start of the tenancy. She went to the rental unit and showed the tenant how to use it. When she checked a few days later the tenant told her it was working. The landlords say they have not received any complaint since.

The tenant says that about four months ago she noticed that one of the toilets was leaking. Based upon what a friend told her she believes that the issue is that the seal needs to be repaired. She has not been using this bathroom since she noticed the leak. The tenant also testified that the fan in this bathroom no longer works. The tenant testified that despite her best cleaning efforts there is a persistent smell in the ensuite bathroom and she wonders whether there is a leak in that bathroom as well.

One of the issues in the hearing was whether the tenant had advised the landlord about repairs that were required.

The tenant testified that:

- She told the landlord about the problem with the toilet in a telephone conversation in April.
- In any conversation with the landlord about repairs he told her that everything was working at the start of the tenancy and if anything has quit working it must be because she had damaged it.
- She did not have a telephone number or e-mail address for the landlord in Taipei. Whenever he called her it was from an unknown number so she could not call him.
- The landlord had told her that the agent would be her contact and gave her the agent's telephone number.
- She left telephone messages for the agent but they were never returned.
- She sent a registered letter to the agent setting out the deficiencies in the rental unit and asking for compensation in an amount equal to two months' rent. That letter was not returned to her and is the letter she submitted as evidence.

The male landlord testified that:

- On the documents given to the tenant at the start of the tenancy were his e-mail address and his Taipei telephone number, neither of which have changed.
- He or his wife have telephoned, e-mailed or texted the tenant every month about late or unpaid rent. She could have replied to the e-mails or the text messages.
- They had told the tenant that if there were any problems she could contact the agent and the agent would arrange for the repairs.
- When he called the tenant about the rent she would berate him about various things but he did not understand what she was talking about.
- Everything in the unit was working at the start of the tenancy. If anything has quit working the tenant must have broken it.

The female landlord gave similar evidence.

According to the tenant there was a confrontation between herself and the landlord on the day she moved in that resulted in the police being called to the rental unit. She asks for compensation for the embarrassment caused by this event.

The tenant testified that the unit was dirty when she moved in and she was required to spend a lot of time cleaning and hauling out garbage. In her letter to the landlord she claimed \$750.00 for cleaning. No other detail or documentation regarding this claim was provided.

The tenant has withheld payment of the April and May rent. The landlords have served her with a 10 Day Notice to End Tenancy for Non-Payment of Rent and their application for an order of possession is set for hearing on June 26, 2015.

#### Analysis

##### *Tenant's Obligation to Pay Rent*

At the close of the hearing the parties were advised of section 26(1) of the *Residential Tenancy Act* which provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent.

##### *Onus of Proof*

On any application the onus is on the applicant to prove their claim on a balance of probabilities.

##### *Storage Space*

According to both parties the tenancy agreement did specify that storage was included in the rent and the tenant was without a storage space for two months. Section 65 provides that where a landlord has not complied with the Act, regulation or tenancy agreement an arbitrator may order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Considering the overall size of the rental unit, the size of the bedroom in proportion to the entire unit, and the half-time use of the bedroom by the tenant's daughter, I find that the value of the tenancy agreement was reduced by 5% for two months. Accordingly, I award the tenant \$200.00 as compensation for lack of storage space for the first two months of this tenancy.

##### *Repairs*

A landlord is responsible for maintaining a rental unit in a manner that complies with the health, safety and housing standards required by law and which, having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Part of a tenant's responsibility is to notify the landlord of repairs that may be required. If a landlord does not make the necessary repairs after receiving notification of a problem, the tenant may apply to the Residential Tenancy Branch for a repair order and, if appropriate, for an order reducing past or future rent. When making such an application a tenant must be able to show, on a balance of probabilities, that they advised the landlord of the problem.

I do not accept the tenant's evidence that she had no way to contact the landlord. At the beginning of the hearing she testified that she e-mailed the landlord to advise him of this hearing. She could have, and should have, set out her requests for repairs in an e-mail to the landlord. That way she would have been able to establish that she had made a request for repairs and when the request was made.

The tenant's letter to the landlord's agent is undated but as this application was filed on April 7 I conclude that it was sent sometime before that date. That letter makes no reference to either toilet or the bathroom fan.

I do accept the landlords' evidence that they contacted the tenant on several occasions about the rent. I suspect, based upon the similarity between the tenant's description of the conversation and the male landlord's testimony in the hearing, that repairs did come up in the course of their telephone conversations but judging from the conduct and demeanour of the male landlord, the tenant, and the tenant's friend in the hearing I can understand why nothing was accomplished during these conversations.

The letter does refer to difficulties with the refrigerator, washer and dishwasher. The tenant's evidence is that the refrigerator had already been fixed. There was no mention of the washer in the hearing so presumably any problem with it had been rectified as well. There is nothing in the tenant's letter that would indicate to the landlord that any problem with the dishwasher was not also a past issue. In the end, the only evidence regarding the dishwasher is the conflicting oral testimony of the tenant and the female landlord.

All in all, I am not satisfied that the tenant notified the landlords that repairs were required to the either toilet, the bathroom fan or the dishwasher before filing this application, which does not specify what repairs are being requested. Accordingly the tenant's application for compensation for the landlords' failure to make repairs as required is dismissed.

However, from the evidence it appears that repairs may be required. Accordingly I order the landlords to:

- have the dishwasher inspected and, if necessary, repaired by a qualified technician; and,
- have the two toilets inspected and, if necessary, repaired by a qualified tradesperson;

on or before June 30, 2015.

If the landlords do not comply with this order the tenant may then file an application for compensation for the landlords' failure to make necessary repairs.

*Other Claims*

The tenant's claims for loss of food, eating out, cleaning, and the fight at the start of the tenancy are all dismissed. Not only is there no detail or documentation in support of these claims; the amounts claimed are excessive and the tenant's oral testimony is not credible.

*Filing Fee*

As the tenant was only partially successful on her application I find that she is only entitled to reimbursement from the landlord of one half of the fee she paid to file this application, \$25.00.

Conclusion

- a. A monetary order in favour of the tenant in the amount of \$225.00. Pursuant to section 72 this amount may be deducted from any rent due or becoming due to the landlords.
- b. A repair order has been made.

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 21, 2015

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Residential Tenancy Branch

