



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR

### Introduction

This hearing was dealt with an application by the tenant for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent and an order reducing the rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard. The tenant advised that he had moved out of the rental unit and the application to set aside the notice to end tenancy was no longer relevant.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

### Background and Evidence

The rental unit is in a two story home with eight bedrooms, five full bathrooms and a half bath, two living rooms, a kitchen and a dining room. The tenants are students. Five lived upstairs; three lived downstairs. Each tenant had their own bedroom and they shared the other rooms. Some areas of the house were locked off for the exclusive use of the landlord. Each tenant signed a separate tenancy agreement.

Neither party filed a copy of the tenancy agreement in evidence but they testified that this was an eight-month fixed term tenancy; the monthly rent of \$750.00 was due on the first day of the month; and the rent did not include utilities.

The tenant testified that when he looked at the house the landlord told him there would be five people living there and the basement would only be used for storage. The landlord testified that he told the tenant there would be five people on the first floor and he did not give a maximum number for the house. Three people moved into the three bedrooms on the lower level of the house at the beginning of September. Several tenants signed a witness statement, which was filed by the tenant as evidence. Three of them said they were told there would be seven tenants in the house.

The tenant testified that the landlord told him his share of the utilities would be \$40.00 per month but this is not reflected in the tenancy agreement. In March he started receiving utility bills from the landlord for the actual amount. He has never paid anything towards the utilities because he and the landlord could not agree on the amount.

The landlord testified that he told the tenants the utilities would be shared by the eight of them and his estimate of the cost was \$40.00 to \$50.00 per tenant. The landlord also testified that the other seven tenants have each paid one-eighth of the utility bills presented.

The tenant testified that he had commenced dispute resolution proceedings against the landlord once before but cancelled them because some repairs were made. The tenant's claims for lack of services are as follows.

#### Dining Room Light

The tenant's evidence is that there was no light in the dining room from January 1 to March 28. The landlord testified that he understood the problem was that the lightbulbs needed to be replaced, which is the tenants' responsibility. He said that if he had known it was an electrical issue he would have had an electrician attend to it. The tenant said the landlord was told it was an electrical issue.

#### Electrical Problems

The landlord was advised in November that there were problems and the issue was fixed on February 10. The issue was that if too many electrical appliances were plugged in at the same time, including electric space heaters, the circuits would break. The landlord testified that he had the electrician there about five times. Finally, when he had all the breakers replaced the issue was resolved.

#### Heat

The tenants could not use electric space heaters in the living room, dining room and kitchen until the electrical system was repaired in February. The tenant testified that it started to get very uncomfortable in November. The landlord testified that when the tenants complained about the lack of heat he provided several portable electric heaters.

#### Dryer

There was one dryer for the house. It did not work from February 13 until March 7. The landlord testified that the handyman was there within a week. When he did not hear anything he thought it was fixed. He subsequently found out it was not working so he

bought a new dryer. When it did not work either it became apparent that it was an electrical issue; which he had fixed by an electrician.

#### Bathroom

For most of the tenancy the tenant used the bathroom closest to his room which he shared with one other person. He was not able to use this bathroom from September 1 to October 18 so he had to use another bathroom on the same floor which he shared with two other people.

The landlord said that at first he had asked the tenant not to use this bathroom because he thought there were enough bathrooms in the house. The tenant complained so after a while he told the tenant to use it. No repairs were required.

The landlord testified that the plumber told him that if the shower in this bathroom was used during a cold spell the pipes might break so he asked the tenant not to use this bathroom when the temperature dropped below zero. The tenant said he complied with this request and there were about two weeks in the winter when he did not use this bathroom.

#### Basement Flooding

There was an issue with flooding in the basement. The landlord has settled with those tenants. The tenant said that as a result of the conditions downstairs the three tenants spent more time in the upstairs living room which increased the noise in the living room. The tenant's bedroom is beside the living room and he argues that he was negatively affected by the noise. He testified that there were always two to four people in the living room.

#### Patio Door

The tenant testified that the patio door did not close properly. His concern is that this gap may have added to the heating costs for the unit. The landlord testified that this issue was raised in the first application for dispute resolution served on him. When the tenant cancelled the hearing he thought the issue was resolved.

#### Water Leaks

The tenant testified that there were two significant water leaks in the house – one in the basement and one outside. He testified that he has not seen the water bills and does not know if the landlord made the adjustments promised but he does not want to pay for the leaking water. The landlord said he deducted 20% off of the water bill for the first two months.

The tenant also testified that some of the other tenants discovered a leaking sink in a part of the house that they did not have access to. Again, he does not want to be charged for water that was not used in the rental unit.

### Analysis

This is a claim in contract by the tenant against the landlord. *Residential Tenancy Policy Guideline 16: Claims in Damages* explains the relevant law for these types of claims as follows:

“The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonable possible.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

When a party claims that a written contract does not contain the whole agreement it is up to that party to prove their claim. The tenant has not succeeded in doing so. The tenant's claim for compensation because the landlord rented to eight people is dismissed. First of all, there is apparently nothing in the written tenancy agreement indicating any undertaking by the landlord that he would not rent out the downstairs bedrooms. There is no evidence of any promises or undertakings being made in the

advertisements for the house. There is only the contradictory oral testimony of the two parties. The landlord's testimony that he said there would be five residents upstairs is consistent with the layout of the house. The statements from the other tenants do not support the tenant's statement that a limit of five tenants was agreed upon before he signed the tenancy agreement as three of the other tenants say they were told there would be seven, not five, tenants.

If the rent did not include utilities, the tenants are responsible for the actual costs of the utilities. Once again, there is apparently nothing in the tenancy agreement that limited the amount the tenant may be required to pay for utilities.

It appears that the problems with the heat, the dining room light, the dryer and the circuits all relate back to the same root cause – the electrical system in this house. The landlord did make an effort to have these problems addressed and was ultimately able to have it fixed but in the meantime the value of the tenancy was reduced. I award the tenant a rent reduction in the amount of \$450.00 (calculated as 20% for three months) for the deficiencies in these various services.

There is nothing to indicate that the tenancy agreement gave the tenant exclusive use of the bathroom nearest his bedroom. Even when this bathroom was not in service there were four other full bathrooms for the eight tenants in this house. That is quite adequate. There is no evidence that the tenant suffered any reduction in the value of his tenancy because he sometimes had to walk a little further or share a bathroom with one more person than usual. This claim is dismissed.

As the tenant has not paid anything towards utilities he has not suffered any loss as a result of water leaks or unsealed doors. The landlord's claim against the tenant for utilities is set for a date in the future. If any adjustment in the utility bill should be made it will be done at that hearing.

The tenant's claim for compensation for noise in the living room is dismissed. He was moving into a house filled with students and took the bedroom next to the living room. He should have realized that this might be one of the noisier bedrooms in the house. Other than the tenant's bare statement there is no evidence that the living room was busier or noisier than it would have been if there had not been a water leak in the basement.

As the tenant was partially successful on his application he is entitled to reimbursement from the landlord of the \$50.00 fee he paid to file it.

The tenant also claimed the cost of registered mail. The *Residential Tenancy Act* does not allow arbitrators to award any of the costs of participating in a dispute resolution proceeding other than the filing fee.

Conclusion

I find that the tenant has established a total monetary claim of \$500.00 comprised of an award of \$450.00 for repairs, services and facilities agreed upon but not provided and the \$50.00 fee paid by the tenant for his application. Pursuant to section 67 I grant the tenant a monetary order in this amount. 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: June 16, 2015

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Residential Tenancy Branch

