



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This is an application brought by the tenant(s) requesting that a monetary order be issued against landlord in the amount of \$3000.00. The applicant is also requesting recovery of the \$50.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Adjournment request

Before proceeding with the hearing I dealt with the request, by the applicant, for an adjournment.

The applicant requests an adjournment of today's hearing stating the following:

- My personal laptop quit on me in the middle of February and I have all the evidence on my laptop, including photos that I believe will result in a ruling in my favor. I did contact my repair person and make arrangements to have it fixed.
- I have only recently been able to afford to pay for the retrieval of the information off my hard drive, as my employer stopped paying me in March and only recently paid me the outstanding wages as of May 26. Please see attached receipt for purchase of external hard drive.

- The applicant further stated that she did not submit her evidence prior to mid-February because she was dealing with a stressful situation with her roommate, and was giving care to sick family members.

The respondent stated that she is opposed to any adjournment because she believes the applicant had plenty of time to supply her evidence on time for today's hearing.

#### Decision on the request for adjournment

It is my decision that I am not willing to grant an adjournment of today's hearing because, since the tenant filed her application for dispute resolution on December 1, 2014, she had plenty of time to submit her evidence before the loss of her computer in mid-February of 2015.

Section 2.5 of the Residential Tenancy rules of procedure:

#### **2.5 Documents that must be submitted with an application for dispute resolution**

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch:

- ☐ a detailed calculation of any monetary claim being made;
- ☐ a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- ☐ **copies of all other documentary and digital evidence to be relied on at the hearing.**

Further section 3.11 of the Residential Tenancy rules of procedure states:

#### **3.11 Unreasonable delay**

Evidence must be served and submitted as soon as reasonably possible.

If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

In this case, although the applicant claims that she was dealing with a stressful situation with a roommate, and was providing care to sick family members, the applicant has provided no evidence in support of those claims.

Even if I accept that the tenants computer failed in mid-February 2015 it is my finding that the applicant had 2 ½ months to provide her evidence before her computer failed, and her failure to do so was an unreasonable delay.

Therefore I will not allow an adjournment for the applicant to provide further evidence.

I therefore proceeded with the hearing.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

This tenancy began on July 27, 2010 and ended on November 30, 2013.

The applicant applied for dispute resolution on December 3, 2014.

The applicant testified that:

- In January of 2011 there was no heat in the rental unit for approximately one month when the heat exchanger failed. The landlord had full control of the thermostat at that time and should have ensured that there was heat to my rental unit.
- In the fall of 2011 the landlord had family camping outside and she found a full hospital bottle urine sample in the yard.
- During the tenancy the landlord reduced the cable and Internet on occasion without any notification and since cable and Internet are included in the rent, she thinks this is an unreasonable reduction in use.
- The landlord also left her responsible for shoveling the snow in the rental property. She shoveled the snow in the winter of 2010/2011, 2011/2012, and 2012/2013. She is only asking to be paid for shoveling the snow for the winter of 2012/2013, as that winter she was told it would be her responsibility as the landlord had hurt her knee.
- She also believes that the suite was not up to code as there was no range hood, the dryer was not properly vented, and there was no ground fault interrupted plug in the bathroom.
- The landlord also frequently came into her rental unit without giving proper notice or with short insufficient notice.
- Further, after she complained to the landlord about being blocked in by the landlord's guests parking in the driveway, she was given a two month Notice to End Tenancy which she believed was given as retaliation for her complaining.
- The landlord became abusive to me over parking, yelling and screaming at me.

- The landlord claimed that the two month Notice to End Tenancy was for her daughter to move into the rental unit, however she already had a room elsewhere for her daughter.
- Further when serving the Notice to End Tenancy the landlord in fact served three copies of the notice, one posted on her door, one tape to her car, and a third thrown at her feet. This was out right harassment as taping one on her door would have been sufficient.
- The landlord also took and read my magazines and then later returned them and some mail was taken and then returned to me opened.

The applicant is therefore requesting compensation as follows:

|  |           |
|--|-----------|
| 3 years loss of quiet enjoyment and harassment | \$2400.00 |
| Snow removal                                   | \$600.00  |
| Filing fee                                     | \$50.00   |
| Total  | \$3050.00 |

The respondent testified that:

- There was never any problem with the furnace to the rental unit and it never broke down in January of 2011 as claimed by the tenant. Further, all the heat is on one thermostat and therefore if the tenant had been cold we would have been cold too.
- The tenant never complained about heat in January of 2011, and in fact they provided auxiliary heaters to the tenant.
- They did have family members stay in a camper on the property, however there was no way whatsoever the family members would've left a pile of urine lying around.
- At no time did they ever change the cable or Internet. They always had Internet with Shaw and a certain number of television channels are included. That was never changed during the whole tenancy.
- We always took care of the snow shoveling, unless we were away in which case the tenants were informed that they could either shovel it themselves or park at the bottom of the driveway and they would deal with it upon their return. The tenant chose to do some shoveling however she always did it happily without any complaining and no compensation was ever requested by the tenant for shoveling snow.
- The rental unit was up to code. The range does not have a hood above it however there is no requirement for a hood. The dryer was properly vented and

all the electrical was up to code, so she has no idea what the tenant is talking about.

- There was never any mention of parking problems from the tenant until after she gave a two month Notice to End Tenancy for her daughter to move into the rental suite. The landlord further states that you can see by the copies of the texts that she was very cooperative and accommodating to the tenant when the tenant complained about being blocked in. There certainly was never any yelling or screaming over parking.
- At no time did she ever take the tenants magazines and read them and she certainly never opened any of the tenant's mail. There was one occasion where she inadvertently took one of the tenant's flyers, however it was returned when she noticed her error.
- In fact all the problems claimed by the tenant seem to only be brought up after she had given a two month Notice to End Tenancy, and she believes that the tenant was upset at having been given a notice and therefore decided to build a case so that she could file a monetary claim.
- You can see by the tenants e-mail that, even in September of 2013, she was very happy with the rental unit and wanted to stay, and makes no mention of any of these problems that she now claims were ongoing over a three-year period.
- She finds it very suspicious that in September of 2013 everything was fine and the tenant was happy with the rental unit and then files a claim, over a year after vacating, stating that she had a loss of use of enjoyment for a full three years.

### Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case, although the applicant has made numerous allegations against the landlord, it is just her word against that of the landlord and the landlord has denied all the allegations. Therefore it is my finding that the applicant has not met the burden of proving any of her claims against the landlord.

Further, as pointed out by the landlord, if the tenant had really suffered a significant loss of use and enjoyment of the rental unit for three-year period, why in September of 2013, just two months before vacating the rental unit, would she send an e-mail to the landlord stating "I really do like this place and plan on continuing to stay."

It is my decision therefore that I will not allow any of the applicants monetary claim against the respondent.

Conclusion

This application has been dismissed in full without leave to reapply.

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 17, 2015

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Residential Tenancy Branch

