



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** ERP, MNDC, RR, FF

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for an order directing the landlord to make emergency repairs and reduce rent. The tenant also applied for a monetary order for compensation for loss of the supply of cold water and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the tenant entitled to compensation? Is the tenant entitled to the recovery of the filing fee? Is the landlord negligent with regard to maintaining the rental property?

### **Background and Evidence**

The tenancy started in February 2010 for a fixed term of six months. At the end of the tenancy, the lease was renewed for another fixed term. This practice continued on with the lease being renewed for periods of six or seven months at a time. The last lease was entered into on March 01, 2015 for a fixed term of seven months. A copy of the tenancy agreement was filed into evidence.

A term of the tenancy agreement requires the tenant to move out at the end of the fixed term. The tenant has signed in acknowledgement. The landlord stated that she has informed the tenant multiple times that she would not be entering into another lease at the end of the fixed term and reminded the tenant that he would be required to move out by August 31, 2015.

The rental unit is a suite located in the basement of the rental property. There are a total of four suites in the building. The monthly rent is \$950.00 payable on the first of each month.

The tenant stated that he has lived in the unit for a total of 65 months and is claiming a percentage of the rent he has paid since the start of tenancy, as compensation for the problems through the tenancy. The tenant listed four areas of concern for which he is claiming a total of \$25,000.00 as compensation.

1. The landlord encroaching on the property
2. The landlord denying the tenant the use of the garage
3. Pain and suffering
4. Problem with the cold water supply

The tenant stated that for the first three items he is claiming 10% of the total rent he paid during his tenancy. Since the rent is \$950.00 per month and the tenant has resided and paid rent for 65 months, 10% works out to \$6,175.00 per item

The tenant is claiming 20% of total rent paid during the tenancy for the problem with the cold water supply which works out to \$12,350.00.

The tenant has capped his claim at \$25,000.00.

1. The landlord encroaching on the property

The tenant stated that the landlord is constantly encroaching on the property and interfering in his personal life. As an example the tenant stated that when he proposed to his girlfriend, she spoke with the landlord and informed the landlord of the happy event. The tenant stated that the landlord informed his girlfriend that the tenant has proposed to his other girlfriends too. The tenant considered the landlord's response as interference with his personal life.

The tenant also stated that the landlord has entered his unit at least 5 times during the tenancy without providing 24 hours written notice. The tenant agreed that the landlord entered the unit only to carry out repairs and in the company of a repair technician.

The tenant also complained that the landlord communicates with the tenant's girlfriend who speaks English as a second language instead of communicating solely with him. The landlord stated that the tenant's girlfriend is named on the tenancy agreement and speaks English well enough to be employed.

Sometime during the tenancy when the cold water problem was being addressed, the landlord had asked the tenant's girlfriend about the status of the cold water supply and she had replied that it was fine.

The tenant also stated that the landlord visits the property often. The landlord stated that she visits to maintain the yard, remove garbage and pick up mail.

2. The landlord refusing the tenant the use of the garage

The landlord stated that the use of the garage is not included in the tenancy agreement. The tenant agreed.

3. Pain and suffering

During the hearing the tenant withdrew his claim for pain and suffering

4. Problem with the cold water supply

The tenant stated that since the start of tenancy, the cold water tap has been problematic. The water is sometimes cold and sometimes the temperature varies from warm to hot. The tenant stated that he informed the landlord verbally about this problem multiple times.

The landlord stated that the tenant is a plumber by profession and at the start of tenancy; he informed the landlord about the problem and asked the landlord if he could fix it. The landlord agreed. The landlord stated that the tenant resolved the problem by changing the seals on the taps. The landlord stated that she compensated the tenant for his time and for supplies. The tenant stated that he has not received any compensation for the repair work he did.

The landlord testified that the next time she heard of the problem was in late May 2015. The tenant and the occupant of the main floor complained about the cold water supply and again the tenant stated that he could fix the problem and the landlord allowed him to. However, this time changing the seals did not resolve the problem and the tenant told the landlord that the hot water tank was not functioning properly.

The landlord had had the hot water tank serviced in February 2015 and therefore the landlord contacted the company that had provided the service. The company informed the landlord that the tank was not the source of the problem.

In June 2015, the landlord spoke with the female tenant regarding the problem and she informed the landlord that the cold water tap was running cold and there was no problem.

The landlord hired a plumber to visit the rental unit to check out the cold water supply. The plumber attended the rental unit on July 08 and 09. During these visits the plumber found that the cold water supply was fine for most part, but found that there was a possibility of a crossed line which may be causing the problem.

The landlord stated that the tenant had done some plumbing work without the landlord's permission. It was determined that the plumber would have to investigate further to determine the location of the crossed line.

On July 13, 2015 the landlord requested the upstairs tenant to post a notice of entry on the tenant's door. The upstairs tenant did not post a notice but verbally informed the tenant that a plumber would be visiting on July 14, 2015. On July 14, the tenant refused entry to the plumber because the landlord had not provided 24 hours written notice.

The plumber informed the landlord that the tenant was rude to him during the prior visits as well and suggested that the work be done after the tenant moves out on August 31, 2015.

The landlord filed copies of the invoices of the visits. The landlord stated that according to the plumber, water lines may be crossed which is causing the problem. The landlord agreed to provide at least 24 hours written notice prior to future visits from the plumber.

### **Analysis**

Based on the sworn testimony of the both parties, I find as follows:

1. The landlord encroaching on the property

*Residential Tenancy Policy Guideline#7* states that the *Residential Tenancy Act* does not require that notice be given for entry onto the residential property. However, the *Act* recognizes that the common law respecting landlord and tenant applies. Therefore unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering notices of entry to the premises.

The landlord testified that she visits the property to perform activities which include maintaining the yard, taking garbage to the curb and picking up mail. The landlord maintained that she did not enter the rental unit without the tenant's permission. However the landlord agreed that except for one occasion, the landlord did not provide written notice to the tenant.

Based on the testimony of both parties, I find that the landlord has not contravened the *Act*, by attending to the yard, taking garbage to the curb and picking up mail. I find that the landlord attends the rental property to carry out reasonable activities. In addition, the landlord has also not contravened the *Act* by speaking to the female tenant.

Accordingly, I find that the tenant has not proven his claim for compensation.

However, I order the landlord to provide at least 24 hour notice prior to entry into the rental unit, in keeping with section 29 of the *Act*.

## 2. The landlord refusing the tenant the use of the garage

Upon review of the tenancy agreement, the use of the garage is not included in the rent. Therefore the tenant's claim for compensation is dismissed.

## 3. Pain and suffering

The tenant withdrew this portion of his claim. Therefore the tenant's claim for compensation for pain and suffering is dismissed.

## 4. Problem with the cold water supply

Based on the testimony of both parties, I find that the problem with the cold water supply exists. I accept the landlord's testimony that when the tenant first informed her about the problem, she agreed to allow him to rectify it because he is a plumber by trade.

I further find that the problem resurfaced in May 2015 and that the landlord followed up on the tenant's recommendation that the source of the problem was the hot water tank. I also find that the landlord contacted a plumber and the plumber visited the property on July 07 and 08 but was refused entry by the tenant on July 14, 2015.

For the tenant to be entitled to compensation in the amount of his claim of \$12,350.00, I have to determine whether the landlord was negligent in responding to the problem.

Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for a problem, if he or she was aware of a problem and failed to take reasonable steps to correct it.

Based on the documentary evidence and verbal testimony, I find that the landlord acted on the complaint, in a timely manner and therefore was not negligent. Accordingly I dismiss the tenant's claim for compensation in the amount of \$12,350.00.

The tenant has not proven his claim and therefore must bear the cost of filing his application.

I order the landlord to provide at least 24 hours written notice prior to the scheduled visits of the plumber and/or other visits and act in compliance with section 29 of the *Act*.

### **Conclusion**

The tenant's application is dismissed in its entirety.

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: July 30, 2015

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Residential Tenancy Branch

