



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Plan E Real Estate Services LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order for compensation for loss or money owed under the Act, regulation or tenancy agreement and the recovery of their 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.

### Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

### Background, Evidence

The tenants' testimony is as follows. The tenancy began on September 1, 2010 and ended on July 27, 2015. The tenants were obligated to pay \$1200.85 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit.

The tenants stated that they had enjoyed a very friendly relationship with the previous property managers. The tenants stated that when the subject landlord took over the building in August 2014, that changed. The tenants stated that they felt the landlord was intent on having long term tenants move out so that they could increase the rent \$300-\$500.00 per month. The tenants stated that the laundry was raised to a level that was so unreasonable, that they had to use the local laundromat to wash their clothes. The tenants stated that they are seeking the recovery of those costs plus 5% of their rent as they feel that is a fair number for a total claim of \$640.00.

The tenants stated that they were without heat on several occasions on the following dates; all of September 2014, December 11-13, 2014 and April 5-7, 2015. The tenants feel that compensation in the amount of 10% of their rent over that time in the amount of \$133.00 is a fair number.

The tenants stated that even after they had been successful in previous hearings, the landlords behaviour was such that caused them great stress and anxiety. The tenants stated that they feel that their right to quiet enjoyment was breached on a daily basis by threatening letters, e-mails and phone calls. The tenants stated that they became anxious when they were in the apartment for fear of being intimidated by the landlord or their agents. The tenants feel that 50% of the rent is fair compensation to cover the time from August 2014 – July 2015 for an amount of \$7082.00.

The tenants stated that they feel that the landlords' behaviour and tactics were not in good faith and that they made all attempts to have the tenants move. The tenants stated that they feel that \$10000.00 is fair compensation for the "horrible year" they had to endure with the landlord.

The tenants stated that they had to take time off of work to deal with all of the hearings, notices, letters and e-mails from the landlord. The tenants stated that the primary loss of earnings occurred over the two months of August and September 2014 and seek their average earnings over that time of \$1616.00.

The tenants are applying for the following:

1.	Loss of use of the laundry facilities	\$640.00
2.	Loss of use of heat	\$133.00
3.	Loss of quiet enjoyment	\$7082.00
4.	Aggravated damages	\$10000.00
5.	Loss of wages	\$1616.00
6.	Filing fee	\$100.00
	Total	<b>\$19471.00</b>

The landlords gave the following testimony. The landlords stated that they dispute the tenants' claims in their entirety. The landlords stated that the tenants have not provided receipts or invoices to support their claims and therefore should be dismissed. The landlords stated that the tenants were adversarial towards the new owners from the moment they took possession of the building. The landlords stated that they adamantly deny the allegations made by the tenants that they were attempting to evict all of the tenants so that they could rent the units at a higher rate.

The landlords stated that the reason the notices and letters were sent out was that many tenants were not in compliance with their tenancy agreements, i.e. that tenants did not have sufficient insurance for their unit. The landlords stated that when they

advised the subject tenants of the lack of compliance, the subject tenants were the ones that became intimidating and threatening towards the landlords and their agents. The landlord stated that after a rocky start to their relationship, communication was next to non-exist after September 2014 except to participate in arbitration hearings. The landlord stated that the tenants did not bring up any further issues and were not aware of them until they were served this application for this hearing. The landlords stated that they feel the tenants are doing this in retaliation to the landlords trying to run their business in a more professional and strict manner than the previous owners.

### Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I address the tenants' claims and my findings as follows.

1. Loss of use of the laundry facilities - \$640.00.

The landlord disputes this claim. The landlord stated that the tenant has no receipts to prove the actual loss. The tenants stated that they are relying on their testimony to support this claim. The tenants stated that they cannot provide receipts as the laundry is coin operated and doesn't issue receipts.

The tenants have not provided tangible and real evidence for consideration; they have provided anecdotal evidence, at best. Without any receipts or logs that reflect dates, times, loads of wash and costs incurred, there is no clear way to ascertain how much they have spent and therefore they have not met ground #3 as listed above. I dismiss this portion of their application.

2. Loss of Heat - \$133.00

The landlord stated that the furnace was off for the month of September because of the warm weather. The landlord stated that because it's an old building and an old boiler system they need to shut it down whenever possible to extend its life. The landlord stated that the other dates in question were for scheduled maintenance. The landlord stated that the tenants were advised in writing in advance that maintenance was to be done and that they were done as quickly as possible. The landlords stated that the tenants called them on September 29, 2014 to advise them of the lack of heat. The landlord stated that the heat was turned back on October 1, 2014.

The tenants stated that the landlord should provide heat at all times and should not be subject to the calendar. The tenants stated that it can get cold at any time of the year and that the heat should be ready and available on demand. Residential Policy guideline 16 addresses the issue before me as follows.

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I am satisfied that the tenants were without heat on several occasions based on the landlords own testimony, but do not agree with the amount as claimed. The tenants did not challenge the landlords' testimony that they had only made mention of the loss of heat on one occasion; September 29, 2014. Based on the limited amount of inconvenience to the tenants, I find that a nominal award of \$25.00 is appropriate and grant the tenants that amount.

### 3. Loss of Wages - \$1616.00

The landlords dispute this claim. The landlords stated that the tenants couldn't prove how long they prepared for the hearing and that it should be dismissed. The tenants stated that the landlord caused them to take time off of work due to the ongoing letters, notices and issues between them. The tenants stated that they had to take time off to prepare for the hearings.

The tenants haven't satisfied me of any of the four grounds as listed above. The landlords and tenants have engaged in several hearings. The tenants chose to take the time off as they saw fit and were the ones to initiate an application for dispute resolution.

In addition, they have not provided sufficient evidence of loss of income and I therefore dismiss this portion of their application.

4. Loss of quiet enjoyment - \$7082.00.

The tenants stated that the ongoing harassment of notice to end tenancy emails and phone calls merit their request for compensation. The landlords stated that much of the tenants anxieties were based on their non –compliance with their tenancy agreement and should not be placed upon the landlord. In addition, the landlord stated that they parties had virtually no communication since December 2014. The landlord stated that they had not been informed by the tenants for any breaches of loss of quiet enjoyment until they were served the hearing papers. It's clear to me that the relationship between these two parties is an acrimonious one, however the tenants have failed to provide sufficient evidence that the landlord was in breach of the Act, regulations or tenancy agreement to justify an award, accordingly I dismiss this portion of the tenants application.

5. Aggravated Damages - \$10,000.00.

When an applicant makes a claim for aggravated damages an arbitrator must consider the following as per Residential Tenancy Guideline 16:

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed. They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.

As stated in the previous claim, I fully accept that the parties have had a less than ideal relationship in terms of this tenancy. However, I do not accept the tenants submission that the landlord has engaged in a campaign of trying to evict all tenants so that they can re-rent the units for a higher rent. Furthermore, the tenants did not inform the landlord of their issues prior to the service of documents. Based on all of the above and on a balance of probabilities I dismiss this portion of the tenants' application.

As the tenants have been partially successful in this application I find that they are entitled to half of their filing fee and I award them \$50.00.

Conclusion

The tenant has established a claim for \$75.00. I grant the tenant an order under section 67 for the balance due of \$75.00. 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: December 10, 2015

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Residential Tenancy Branch

