



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, DRI, ERP, MNDC, MNR, RP

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- disputing an additional rent increase;
- for an order that the landlord make emergency repairs for health or safety reasons;
- for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- for a monetary order for the cost of emergency repairs; and
- for an order that the landlord make repairs to the unit, site or property.

The hearing did not conclude on the first scheduled date and was adjourned to continue at a later date. The hearing did not conclude on the second scheduled date and was adjourned to continue again.

The tenant attended the hearing with the tenant's spouse who is also a tenant, although not named in the Tenant's Application for Dispute Resolution, on all scheduled dates, and both gave affirmed testimony. The landlord also attended the hearing accompanied by his son who acted as agent for the landlord and assisted with the language barrier, on all scheduled dates. The landlord's native language is not English, however the landlord and the landlord's agent both gave affirmed testimony.

The parties each provided evidentiary material, however the evidence of the landlord was not provided to the tenant. The landlord stated that the tenant did not provide the landlord with a forwarding address to send it to and the landlord applied to adjourn the proceedings to give the landlord an opportunity to provide it to the tenant, which was opposed by the tenant. The tenant stated that when the tenant provided additional evidence to the landlord on October 24, 2015 the tenant told the landlord that any documents would be forwarded to the tenant, and the landlord had the tenant's work address. He also stated that an adjournment would cause the tenant to take more time off work, and the tenant's spouse stated that if an adjournment is granted, the tenants may wish to provide further evidence as well, and indicated that it is a typical stall tactic by the landlord.

The Rules of Procedure require parties to exchange evidence well in advance of the hearing and the landlord never made any attempt to provide any to the tenant. I found that it would be prejudicial to the tenant if an adjournment was granted, and the hearing proceeded. The parties were given the opportunity question each other with respect to the testimony and evidence of the tenant, all of which has been reviewed and is considered in this Decision. The landlord's evidentiary material is not considered in this Decision.

At the commencement of the hearing the tenant withdrew the applications for an order cancelling a notice to end the tenancy for unpaid rent or utilities, for an order that the landlord make emergency repairs for health or safety reasons, for a monetary order for the cost of emergency repairs, and for an order that the landlord make repairs to the unit, site or property.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that the landlord has increased the rent contrary to the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the cost of replacing furniture and other items, loss of income, travel expenses, pain and suffering?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began about 8 or 10 years ago and ended on November 1, 2015. Rent in the amount of \$900.00 per month was payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an entire house and the landlord lives about a block away. No written tenancy agreement exists.

On October 1 or 2, 2015 the tenant went to the landlord's house to give him the rent and handed him \$900.00 in cash. The landlord said he didn't want it and wanted \$1,300.00, adding that he was raising the rent to that amount. He threw the money at the tenant, screaming at him and threatened to sick his Rottweiler dog on the tenant and to beat up the tenant, so the tenant left. On October 6, 2015 the tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

At the beginning of the tenancy the tenants painted, hauled away garbage, cleaned the carpet and the entire rental unit. The landlord did none of that. The tenant had told the landlord that water was leaking downstairs and the landlord couldn't be bothered to look. The tenant wiggled the pipe to see if a clamp might help. It had previously been clamped, but water blew out and

was gushing into the room. The tenant tried to call the landlord again, but he didn't attend. The tenant made the repair after purchasing 6 clamps.

The tenant also used a mold covering paint in the bathroom and other areas where mold was present, and it helped some, but the mold is in the walls, windows, ceiling and carpets.

The landlord didn't do any repairs, painting or maintenance to the rental unit to any standard of living. A storm blew the shingles off the roof a couple of years ago in the summer and the roof leaked which caused the house to fill with mold. After about a year of it leaking, the landlord called a restoration company who told the landlord that the house had mold issues. There was mold in the carpet, on windows, in the insulation, and the landlord made no attempts to clean it up. The mold got into the tenant's furniture and mattresses that were in a storage room. The landlord saw the damage but didn't do anything about it.

The tenants put a pail under a leak in the plumbing, and finally after the tenants continued to complain the landlord repaired the leak, but it took a year to repair the roof.

The tenant works from home and couldn't do so because his computers were damaged. The tenants' furniture is in storage and can't be used due to the mold and the tenant has been told that they can't be cleaned. The tenants had good furniture and wanted to salvage it. Photographs have been provided showing that everything has mold on it. The tenants took the mattresses to the dump on or about October 31, 2015 as well as towels, clothing, wood and other damaged items. The tenants did not have insurance and the landlord said it would be covered on his home owners' policy, and that the tenants would be reimbursed by the landlord's insurance claim. The landlord also promised to provide new carpet and flooring, none of which happened.

The tenants had to bug the landlord forever before the landlord would get around to attending to maintaining the rental unit; it was a continuous thing. Repairs to the bathroom were required, the toilet would leak and the septic system was not maintained, which finally broke down to the point where the tenants saw sewage leaking out of the septic system into the driveway. The tenant sent his wife and children to stay with family in Saskatchewan for 2 weeks because the City was going to condemn the house unless it was repaired. The repair took at least 2 weeks.

The plumbing was on its last legs and all toilets in the rental unit leaked and were not functional. Finally after hounding the landlord for at least a year, the landlord replaced the toilets, taps in the bathrooms, the kitchen sink taps and shower. All had degraded so much they weren't useable.

The washer, stove, dryer and dishwasher all broke down. The tenant purchased a stove and dishwasher and was eventually reimbursed by the landlord by way of a reduction in rent.

The tenant tried to help by advising the landlord to do some of the repairs to prevent further damage, but then the landlord wanted to raise the rent.

The landlord cut some trees down on the rental property and didn't clean it up. The tenant's wife was taking pictures of the tenants' children outside and tripped over the trees and broke her wrist.

**The tenant's spouse** testified that the rental unit is a 900 square foot, 1 bedroom house. The tenants moved into it from a 4 bedroom house, and the tenants have 3 children. The basement has 2 unfinished rooms, a family room and a storage room, and about half of the basement is unfinished.

When the tenants moved in around mid-April, 2006, the tenant painted both bathrooms with mold paint and touch-ups and they washed and cleaned the house. They also had professional carpet cleaning done and bought floor sealer for the ceramic tiles in the bathroom to help keep it cleaner.

The tenant told the landlord about window condensation that was so bad they couldn't see through them before they moved in and the landlord said he was going to replace them all but none have been replaced.

The front yard was overgrown with trees and weeds, and the landlord had sprinklers which would blast the windows. The tenant told the landlord that the sprinklers were stuck and blasting the windows, but he wouldn't attend. The tenants had to hound him. That likely ruined the windows and the tenant told him it went into basement and it was damp. The tenants could smell mold in the basement.

The odd time the landlord would attend to fix things, but the tenants always had to wait a month, the repair would work for a month and be broken again; never repaired properly the first time.

The cedar trees along fence are very mature, about 30 years old or more and the wind tips them. The tenant told the landlord he should cut them to prevent breaking. He said he would send someone over, but years go by and nothing was done. Photographs of the trees have been provided, some of which appear to be dead. In 2008 a really bad storm occurred in the summer causing shingles to blow off the roof and one of those trees broke off and went through the gazebo over the pool. The trees are dying and dead because they weren't getting the moisture. Water ran into the master bedroom and living room and the tenants put pans under but the bed would get wet. In winter the windows sweat, freeze and then melt. No windows have been replaced since the beginning of the tenancy.

The landlord called a restoration company about the roof so that the landlord could make an insurance claim. The tenant walked through with the restoration fellow, and he said the carpet was wet, there were mold issues, the ventilation in the attic was insufficient and the house needed a new roof. After months of telling the landlord about it, he sent someone to replace a few shingles and patch the roof, but during the next wind storm they blew off. The roof and ventilation system were repaired or replaced in 2013, but for at least 6 months the rental unit had missing shingles. Photographs have been provided, and the tenant testified that the landlord always did a patch job; never did the job right and more leakage was caused. The

landlord said he'd put in wood floors but still hasn't. The restoration company was going to drywall the ceiling in the bedroom but the tenants had no where to go.

The outdoor tap also sprung a leak on the inside of the house causing water damage to the tenant's belongings, which the landlord saw. In October, 2015 the landlord was told about a leak in the basement, but he just walked away. The tenant turned off the water, got some pails and tried to put some clamps on it but it still leaked and the landlord wouldn't come to see it. The water leaked on the tenant's computers and now only 1 of 3 still works.

On November 7, 2010 the tenant's spouse broke her wrist in 6 fragments on a broken tree. It didn't set properly and her wrist still has reduced mobility and appears deformed. Dead trees are still there. Everything is always put off, but nothing done. Now she has to live with pain for the rest of her life. She can't play piano or other things she enjoys due to the landlord's negligence. There was no need. The landlord has trimmers and other tools, but couldn't be bothered.

The landlord has never had the septic system cleaned until it broke down which was because it was never maintained. The tenants told the landlord about stinky water in the driveway, but the landlord ignored them. Weeks went by and nothing was done. The City came and told the landlord to fix it or they would condemn the house. The tenants couldn't stay at the rental unit, couldn't wash clothes or shower so went to stay with family for 2 weeks.

The tenant does not have the money to replace the items damaged by mold. If repairs were made in a timely manner, none of this would have happened. If the trees had been trimmed and dead ones cleaned up, she wouldn't have a bad wrist. The stress of dealing with the sewer soaking the tenant's belongings has caused them to have to take time away from their business to clean it up. Neither the plumber nor the landlord do it, the tenants do. It's disgusting and shouldn't have had to be done by the tenants. The tenants' quality of life has been affected and severely hampered by living there due to the landlord's negligence. The landlord was told by the restoration company that things needed to be fixed and carpet was full of mold, windows were crappy.

The house was built in the 1980s and appliances break down. The stove broke and the tenants told the landlord, but they had to wait and wait. The landlord didn't want to buy one for full price so bought one for \$50.00 and it broke. Then he finally bought one and the tenant had to install it. The dishwasher broke and after a few weeks of waiting, the tenants bought one and the landlord permitted them to reduce rent for its cost. Then the washer broke and weeks went by. The tenants had no clothes to wear, and had to replace it, having gone to the Laundromat on occasion. The same happened with the dryer and the stove. The water softener leaked but it never worked anyway. The fridge also broke and an employee of the landlord said he was going to replace it with a "junker" and told the tenants to not accept it or they would have spoiled food.

The tenant's spouse has been tested for mold and the prescriptions she takes are for mold specifically. The tenants' kids have not been tested, but have same symptoms and the doctor said they could use the same medication and said to try to avoid mold.

The tenants took a queen set of mattresses that were moldy to the dump, as well as 3 twin sets, 2 carpets, luggage, a brief case, clothing, a couple of desks, a dresser, a couch, and numerous items. The tenants showed the pile of stuff to the landlord. The tenants have provided quotes of costs to replace items that were damaged and medical evidence of having a broken wrist on November 7, 2010. Also provided are a website page describing what items cannot be cleaned after being infected with mold and photographs of the tenant's furniture prior to moving into this rental unit.

**The landlord's agent** is the son of the landlord and testified that the tenants never told the landlord about any of the complaints or of any leaks. They always waited a couple of days and the landlord would always get it fixed right away. He denies that any company would take that long and would take a maximum of a day, or 6 hours to have the water off for.

The septic was fixed about a year after the tenancy began. The previous tenants only had 2 people living in the rental unit, and this tenancy had 5, which uses more water and it needed to be cleaned.

The landlord intended to use the rental unit for family but didn't know he could issue a notice to end the tenancy for that reason. The parties had a conversation and the tenant said he couldn't move at that time, so the landlord said rent would have to be increased. The tenant agreed to \$1,300.00 per month but didn't pay it so the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord's agent also testified that whenever he drives by the windows in the rental unit are all shut and curtains are always closed. There's never any ventilation going through the house. The tenants installed a window air conditioner, but the landlord's agent does not recall how long it had been there.

The tenant told the landlord that the tenant's wife fell off a ladder while picking cherries and broke her wrist, and now says she tripped over a log.

The restoration company employees went into the rental unit and were willing to replace all moldy drywall in rooms that were damaged, but the tenant wouldn't let them in. They had made appointments with the tenants a few times and the tenant would ask how long they would be there and upon replying that 1 or 2 days would be required the tenant would agree, but when they showed up, he wouldn't let them in. A letter from the restoration company dated November 5, 2015 addressed to the landlord which the landlord's agent read during his testimony says: "In November 2012 we were given approval from the insurance company to proceed with repairs, including re-shingling the roof, removing and replacing moldy drywall in the rooms that were damaged due to a leaky roof. The company contacted roofing company to re-shingle the roof but was unable to complete repairs inside home. Restoration tried on several occasions from November, 2012 to January, 2013 to complete the repairs inside the home but were always turned away by the tenants. We would make an appointment with tenants to make the repairs only to be sent away

upon arrival. We advised the insurance company that we were unable to complete repairs inside the home, revised our repair estimate and billed the insurance company for work we completed.”

The landlord’s agent also testified that there’s no evidence that shows anything about damaged furniture, no photographs of items taken to the dump or a receipt. There was absolutely no mold in the rental unit prior to this tenancy.

The septic system was old but as soon as the landlord found out about a repair required, it was fixed and the water was only off for 1 day. There was no leak in the toilet, but under the shower which was fixed by a plumber. The landlord’s agent also testified that he went to the rental unit himself with the landlord and purchased the clamps.

The landlord’s agent does not reside on the rental property or in the community, but is there during the summer months.

**The landlord** testified that as soon as the notice to end the tenancy was given to the tenants, they made this application for dispute resolution because they didn’t want to move.

There were no problems with the house, it was like new and the tenants never complained or told the landlord about mold problems.

After the storm the landlord called the insurance company who looked it over and said they would re-shingle and the landlord was with them when they went inside and saw a very small amount of mold in the bedroom. They said they were going to fix it.

The landlord also denies that the parties couldn’t see out the windows at the beginning of the tenancy and denies promising to replace any windows. Everything was good.

The landlord also testified that the tenant agreed to pay \$1,300.00 per month but the following month he only gave the landlord \$900.00.

During cross examination the landlord was asked several questions about lack of repairs and maintenance and the landlord denied every single question.

### Analysis

Firstly, with respect to the increase in rent, a landlord may not increase the rent unless the landlord gives the tenant 3 months notice, in the approved form, and must only raise the rent by the amount set out in the regulations. In this case, the parties agree that the increase was not paid and the tenants have moved out of the rental unit, and therefore, I dismiss that portion of the tenant’s application.

With respect to the tenant’s application for monetary compensation, in order to be successful the tenant must establish that damages or a loss exists, that it exists as a result of the landlord’s

failure to comply with the *Residential Tenancy Act* or the tenancy agreement, the amount of such damage or loss, and what the tenants did to mitigate such damage or loss.

The *Residential Tenancy Act* states that a landlord must maintain and repair a rental unit in a state of decoration and repair makes it suitable for occupation by a tenant. The landlord denied absolutely everything that was put to him, and the landlord's agent is at the rental property seasonally. This has been a lengthy tenancy and I accept the testimony of the tenant and the tenant's spouse. I found them to be believable, truthful, frustrated and have provided photographs that depict significant issues with the rental unit. I do not accept the testimony of the landlord that the tenants never asked for anything to be repaired, or that if they did, it was handled immediately by the landlord. The landlord was also told by a restoration contractor that significant problems existed. The evidence shows negligence with respect to mold and septic issues which were the landlord's responsibility to maintain.

I find that the tenants have established that the landlord has failed to comply with the *Act*, and that damage or loss exists as a result. That damage includes loss of furniture, computers and personal belongings.

With respect to mitigation, the landlord's agent testified that the tenants wouldn't allow the work to be completed and read a letter from a contractor. The tenant testified that they couldn't allow the home to be torn apart while they were in it, and they had nowhere else to go. Generally, where the work is expected to make the rental unit temporarily uninhabitable, the landlord's responsibility is to provide alternate accommodation, such as a motel room and meals. Tenants pay rent in exchange for a roof over their head and in this case, there is no evidence that the landlord gave that any consideration at all.

The tenant's Monetary Order Worksheet is not very helpful in determining the amount of such claim, citing furniture, household effects, pain/suffering, computer equipment, quality of life, mold allergies, loss of income, travel expenses, emergency repairs, and cleaning/disinfecting for a total of \$25,000.00. The quotes provided by the tenants may be true costs of replacement, which total \$29,125.28, and \$5,344.54, but it is impossible to decipher what the items in the estimates are. The tenant's spouse testified that the quotes are for some of the damaged items, with the exception of the piano.

However, any award must not put the tenants in a better financial situation than they would be if the landlord had complied with the *Act*. The quotes provided are brand new items, and the items in the photographs that were taken prior to this tenancy are approximately 10 years old, or at least some of them.

The tenancy lasted from mid-April, 2006 till mid-October, 2015, approximately 9 ½ years. I accept that the landlord's negligence has existed since the beginning of the tenancy, at least to some extent. I also find that the tenant's quality of life and that of his family has been seriously affected by the negligence, and I accept that numerous items of the tenant were damaged by mold. I accept that the tenant's have established a claim in the amount of \$100.00 per month



since the beginning of the tenancy. I find that the tenants have established monetary compensation for aggravated damages and loss of items in the amount of \$11,400.00.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

I order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed as withdrawn.

The tenant's application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed as withdrawn.

The tenant's application for a monetary order for the cost of emergency repairs is hereby dismissed as withdrawn.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed as withdrawn.

The tenant's application disputing an additional rent increase is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$11,450.00.

This order is final and binding and may be enforced.

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 04, 2015

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Residential Tenancy Branch

