



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RE-MAX CREST REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, MNDC, RP, RR, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the following reasons;

- for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement
- for the Landlord to comply with the Act, regulation or tenancy agreement
- for the Landlord to make repairs to the rental unit
- to allow the Tenant to reduce rent for repairs agreed upon but not provided
- to recover the filing fee from the Landlord

The Tenant appeared for the hearing and provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing. There was no appearance by the Landlord during the 80 minute duration of the hearing. However, the Landlord did provide documentary evidence prior to this hearing. Therefore, I turned my mind to the service of the documents for this hearing.

The Tenant testified that she served a copy of the Application, the Notice of Hearing documents and her evidence by registered mail to the Landlord. As the Landlord had provided documentary evidence prior to this hearing, I was satisfied that the Landlord was aware of this hearing. Therefore, I find the Tenant served the required documents to the Landlord pursuant to Section 89(1) (c) of the Act.

In relation to the Landlord’s documentary evidence, as no one appeared for the Landlord to present and explain this evidence, I did not consider this during the hearing or in my findings below. The hearing continued to hear the undisputed evidence of the Tenant.

Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make repairs and comply with the Act?
- Is the Tenant entitled to a reduction in her monthly rent and to monetary compensation for failure of the Landlord to do repairs in a timely fashion during the tenancy?

Background and Evidence

The Tenant testified that this tenancy started on October 5, 2014 for a fixed term which ended on September 30, 2015. After this time, the tenancy has continued on a month to month basis. Rent is payable by the Tenant on the tenancy agreement of \$2,800.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$1,400.00 on October 2, 2014 which the Landlord still holds in trust.

The parties completed a move-in Condition Inspection Report (the "CIR") on October 4, 2014 which was provided into evidence. The tenancy agreement shows that the only utility included in the rent is water.

The Tenant started her testimony by stating that she had problems of repairs for this rental unit from the moment she moved in and the Landlord has been negligent in completing some repairs and other repairs the Tenant has to be complete or has had to wait for a long time to have remedied. The Tenant testified that she has had to deal with multiple agents of the Landlord during this tenancy which is a source of frustration and a barrier to getting repairs done in a timely fashion. The Tenant explained the following repairs from the onset of the tenancy:

- Entry closet door which had broken glass in the bottom corner;
- Master bathroom shower door which does not open outward; and
- Shower door handle which is loose

The Tenant testified that the broken glass in the closet door is a danger to her children and that they have had to leave it open and contain it by placing furniture around it. This damage is also recorded on the move in CIR. The Tenant testified that the shower door handle is so loose that there is a danger that it could break the shower door glass making this harmful for her children's safety. The Tenant testified that several agents of the Landlord who she has dealt with in this tenancy have made multiple promises to her

that these three items will be repaired but to date they have not. The Tenant provided email correspondence where she requested the above repairs to be made.

The Tenant then continued to explain repairs completed during this tenancy. The Tenant testified that at the start of the tenancy, for the two Tenants named on the tenancy agreement, she received two key fobs for the front entrance to the building but only one key to the rental unit.

The Tenant testified that she made multiple requests by phone, text message and email for the Landlord to provide her with the second key for the rental unit at the start of the tenancy which was not provided to her until October 7, 2015. The Tenant testified that during this time she could not leave the rental unit due to not having a second key.

In addition, the Tenant requested the Landlord to provide her with an extra key fob for the front door, again with multiple requests at the start of the tenancy. However, the Landlord did not provide her with the extra key until January 2016. The Tenant explained that she could only get the fob key from the Landlord as the keys are controlled by the strata.

The Tenant testified that they rented the unit because it had a fireplace. However, when the move in condition inspection was completed, it was discovered that the fireplace was not working. This was noted on the move-in CIR. The Tenant testified that the Landlord's agent promised that this was going to be fixed and replaced. The Tenant explained that she even offered the Landlord's agent a reduced price fire insert for them to use to mitigate any costs related to this. The Tenant provided communication with the Landlord where she provides pictures of the gas insert she offered to give to the Landlord for installation into the rental unit.

The Tenant testified that the Landlord explained to her at the start of the tenancy and before she entered into the agreement to rent it, that the cost of the forced air to heat the rental unit was included in the rent and that the Landlord's strata fees covered the heating cost. However, when the Tenant received her utility bill for the baseboard heating which she was aware was not included in the rent, she realised that the electricity cost of the forced air was also being charged to her. The Tenant claimed that the Landlord made a false promise that the heat was included in the rent.

The Tenant testified that on November 17, 2014 the light over the dining table stopped working and this was the only source of light for that area of the rental unit. The Tenant testified that she sent the Landlord a text message the same day asking for this to be repaired. However, due to the lack of response from the Landlord, the Tenant called an

electrician who completed the repair 8 days later. The Tenant testified that the electrician billed the Landlord who eventually paid the bill on December 3, 2014.

The Tenant testified that in December 2014, she reported to the Landlord that the faucet in the master bathroom and second bathroom were leaking and required repair. The Tenant referred to a letter which she sent to the Landlord informing them of this. The Tenant testified that due to the lack of a response, the Tenant sourced new faucets and hired a plumber to install the new ones. The Tenant explained that she presented the invoices to the Landlord who agreed to have these amounts deducted from January 2015 rent.

The Tenant testified that at the end of June 2015, the fridge and dishwasher were also malfunctioning. As a result, the Tenants sent the Landlord an email on June 26, 2015 but the repair was not completed until the middle of July 2015. The Tenant testified that the toilet also started to malfunction on August 31, 2015 and as a result, she asked the Landlord to have this repaired by September 8, 2015; however, it was not repaired until the middle of September 2015. The Tenant testified that during this time she had to deal with multiple agents who kept referring her around in circles.

The Tenant explained that on August 31, 2015 the dishwasher door stopped closing and kept falling down to the open position. The Tenant said that she reported the issue to the Landlord as the dishwasher door was taking up valuable space in the middle of an already small kitchen. The Tenant testified that this repair was not completed until 80 days after the repair was reported to the Landlord. The Tenant complained that the Landlord replaced the dishwasher with a less expensive basic dishwasher.

Throughout her oral testimony, the Tenant referred to multiple email and text message conversations she had with several agents of the Landlord in this tenancy. When the Tenant was asked about her monetary claim, the Tenant testified that she wanted her rent reduced to \$2,350.00 as this is the amount the renters the two doors away were paying. The Tenant then explained that she had taken the difference in the rent amounts and multiplied this by the duration of the tenancy; however, as this amount exceeded the limit she wanted to apply for before having to pay the increased filing fee, she only claimed \$4,900.00.

The Tenant claims the above amounts for the loss of peaceful and quiet enjoyment of the rental unit due to the repair issues she has had to deal with which involved time, money and energy. The Tenant explained that the Landlord has failed to meet with them to discuss the repair issues and she was referred to dispute resolution by the Landlord.

### Analysis

I have examined the Tenant's undisputed testimony and written evidence and make the following findings based on a balance of probabilities. Section 32(1) and (5) of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the law and makes it suitable for occupation by the tenant. In addition, Section 65(1) (c) of the Act authorizes me to make an order that any money paid by a tenant to a landlord must be repaid to the tenant or must be deducted from the rent. Section 65(1) (f) of the Act also provides me with the authority to reduce past or future rent paid by a tenant to a landlord if I determine that there has been a reduction in the value of a tenancy.

Based on the foregoing provisions of the Act and the undisputed testimony and documentary evidence of the Tenant, I am satisfied that the Landlord has breached the above provisions of the Act by failing to complete the above repairs to the rental suite, despite repeated verbal and written requests made by the Tenant to the Landlord. Therefore, in relation to the outstanding repairs as evidenced by the Tenant, I order the Landlord to make the following repairs to the rental unit:

- Make the fireplace in the rental unit fully functional
- Repair/Replace the broken glass in the master closet door
- Repair/Replace the master bath shower door ensuring it is able to open outward and ensuring the shower door handle is properly fixed

As the Landlord failed to appear for the hearing, there was no opportunity to schedule a reasonable time to complete these repairs. Therefore, until the above repairs are completed and in accordance with Section 65(1) (f) of the Act, I grant the Tenant continuing rent abatement. As a result, the Tenant may reduce future monthly rent payable by \$200.00 until such time the above repairs are completed. The Tenant should inform the Landlord of her intention to redeem this amount when making the reduced monthly rent payments.

In making a finding of the Tenant's entitlement to monetary compensation for a devaluation of the tenancy, I balance the following factors in making my findings. I find that there is no evidence before me that the Landlord verbally promised the Tenant that the forced air heat inside the rental unit was included in the rent. I base this finding on the fact that heat is **not** included in rent on the tenancy agreement which was

signed by the Tenant. Therefore, under the tenancy agreement the Tenant is responsible for paying for heat.

Having examined the dates testified to by the Tenant as to when the repair issues were reported to the Landlord, I find that for some of the repairs, such as the toilet issue and the fridge and dishwasher malfunction, the Landlord completed these repairs a short time outside of the deadline provided by the Tenant and a short time after the repair materialised.

However, I cannot ignore the fact that the Tenant has experienced a multitude of repair issues throughout the duration of this tenancy, some of which occurred at the start of the tenancy and some of which still to this date have not been remedied. For example, I find that 80 days to complete the replacement of a dishwasher door is excessive and I accept that the Tenant was greatly impacted from not having the use of the dishwasher as well as the use of the entire small kitchen space.

In relation to the key for the rental unit, I find the Landlord was obligated to provide each Tenant on the tenancy agreement with a key for the rental unit. I accept the Landlord failed to provide the Tenant with the second key for the rental unit door and that the Tenant was inconvenienced and restricted from leaving the rental unit over a period of two days at the start of the tenancy. I also find that the only way the Tenant was able to obtain an extra key front entry fob from the Landlord was to request this from the Landlord as the keys were controlled by the strata. I find that giving the Tenant this extra key after a period of almost one and half years is again an excessive amount of time for the Tenant to wait.

I also find that the Landlord failed to complete repairs diligently and that this then was the impetus for the Tenant to get these repairs remedied, such as fixing the light of the dining table and the leaking faucets. However, I do take into consideration that the Landlord covered the cost for these repairs.

I do not have the authority to decrease the Tenant's rent indefinitely based on the fact that her neighbour is paying less. This is something the Tenant was required to consider before she decided to enter into the agreement with the Landlord. However, having taken the above factors into consideration, I do find the Tenant is entitled to monetary compensation for a nominal amount of one month's rent (**\$2,800.00**). This amount is based on the Landlord's failure to take ownership of repairs, complete repairs in a timely fashion, and having identified that there are still repairs to be completed. I find this amount is more reflective and compensatory of the Tenant's time, energy and costs she has incurred during this tenancy to deal with the repairs.

As the Tenant has been successful in this matter, the Tenant is also awarded the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. Therefore the total amount awarded to the Tenant in monetary compensation is **\$2,850.00**. Pursuant to Section 72(2) (a) of the Act, the Tenant may achieve this relief by deducting this amount from a future installment of rent. In the interest of clarity to both parties, I have detailed the rent payments to be made by the Tenant for this tenancy pursuant to my findings above:

- For February 2016, the Tenant may withhold rent to receive the monetary compensation payable in the amount of \$2,800.00
- For March 2016, the Tenant is liable to pay \$2,350.00. This accounts for the \$200.00 rent reduction for February 2016 and March 2016 if the Landlord has still not completed the repairs listed above. The amount also includes the \$50.00 filing fee
- For April 2016, the Tenant may continue to deduct \$200.00 if the above repairs have not been completed.

In the month after the above repairs are completed, I order that the monthly rent for this tenancy reverts to the regular amount established in this tenancy agreement (i.e., currently \$2,800.00), minus any deductions authorised above. For example, if the Landlord completes repairs by February 7, 2016 the Tenant is liable to pay the normal amount on March 1, 2015 minus the filing fee and \$200.00 authorised for February 2016. However, if the Landlord completes the above repairs and the Tenant is not satisfied and continues to withhold rent, the Landlord is required to file an Application to prove to the Residential Tenancy Branch that there has been compliance with this decision.

I have also attached a Monetary Order to the Tenant's copy of this decision just in case the tenancy was to end before the Tenant is able to achieve the awarded compensation from rent payable. This order must be served on the Landlord before it can be enforced in the Provincial Court (Small Claims) as an order of that court.

I encourage the Landlord to meet with the Tenant and discuss the above repairs so that they can be completed in a timely fashion so that the tenancy can continue successfully. I would also encourage the parties to work together if future repairs arise during this tenancy.

Conclusion

The Tenant has been successful in her Application. The Landlord is ordered to complete repairs to the rental unit and the Tenant is granted a rent abetment in the amount of \$200.00 per month until the repairs are completed. For the reasons set out above, I also grant the Tenant monetary compensation in the amount of \$2,850.00.

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: January 28, 2016

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Residential Tenancy Branch



