



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: ERP RP MNDC

### **Introduction**

Both parties attended the hearing and the tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on March 4, 2016 and the landlord agreed she received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord do emergency repairs pursuant to section 32; and
- b) That the landlord repair and maintain the property pursuant to section 33.
- c) For compensation for ongoing plumbing problems, including with the toilet and drinking water.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act and are they entitled to orders that the landlord do necessary repairs? Has the tenant proved that through act or neglect the landlord has failed to do repairs and they are entitled to compensation?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in June 2014, it is a month to month tenancy, rent is \$850 a month and a security deposit of \$425 was paid.

The parties agreed that the property is a house in the country which depends on well water pumped by an electric pump from the well. The landlord lives nearby. The parties agreed that the tenant called the landlord on January 23, 2016 to report they had no water. The landlord said she called a plumber and electrician on the 23<sup>rd</sup> but as it was a weekend, the electrician could not come until the 25<sup>th</sup> and the plumber until the 26<sup>th</sup> of January. Apparently an electrical breaker was off and when it was turned on, the

water started running but the tenants continued to have problems with water flow, colour and smell. The landlord said sent professionals in to shock the water and put filters and aerators in on January 26<sup>th</sup>.

The tenant said the plumber does not spend much time when he comes and he had to come in and out a number of times cleaning the nozzle and doing other things because it seems gravel and mud was drawn up by the pump when it restarted. She said, for example, the toilet was continually running because it had overflowed and the plumbing apprentice cut back something and then it started to overflow. She said for about 7 days they could not use the toilet. The landlord said the plumber fixed the toilet on January 26, 2016 and came back three times.

The tenant said the filters have been a problem as the wrong size was put in. She said the apprentice said there were no filters in the pump system. She said the last day she talked to the landlord about the problems was February 3, 2016 but the landlord knew there were ongoing issues that were not fixed. The landlord said the tenant had not paid rent in February and was mainly discussing a possible reduction in rent. She said there was some discussion of the problems with the apprentice plumber who had left the drain pipe of the washer disconnected. He went over and cleaned up the mess he had caused. The landlord said there is a problem with doing repairs as the tenant wants to be home and asks often that they be done after 5 p.m. The tenant said the filters are now in, the water was shocked, it looks clear but is very smelly and turns brown if it sits for a time or is put into a pot.

The tenant requests:

- 1) That the water be tested by the City to be sure it is safe to drink;
- 2) That the plumber inspects the connections and cleans out the lines to restore water pressure and fix the mix-up with warm and cold water as there is a problem with warm water sometimes being in the toilet.
- 3) That the gravel be cleaned out of the lines including the washer as the taps etc. still seem to be plugged
- 4) Compensation of \$250 for the 7 days without water and use of the toilet.

The landlord said she has always been willing to do repairs and responds quickly to take care of the property but the tenant has not complained since the last fix. She said they have the water tested regularly by their own people as they are on a well system also.

Included with the evidence is the Application but no other documentary evidence.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the weight of the evidence is that there was a serious problem with the well after the electric pump stopped working on January 23, 2016 and the parties agreed the landlord was informed of the problem on that date. I find the landlord acted diligently and called contractors who attended on January 25<sup>th</sup> and 26<sup>th</sup> to restore the water flow. As the water was still muddy in appearance, I find the landlord had contractors shock the water and install filters and aerators on January 26, 2015. Both parties agreed that the plumber and apprentice had been in numerous times trying to fix the problems that were mainly caused by the pump sucking up gravel and mud after the outage. However, the tenant says the water is smelly and brown coloured and she fears it may not be safe to drink.

On the preponderance of the evidence, I find the landlord did not violate the Act or tenancy agreement by her actions or neglect. Although the tenant suffered some hardship, I find it was not due to the landlord neglecting to do reported repairs. Therefore, I find based on section 7 of the Act and section 67 that the tenant is not entitled to compensation for the loss of water and toilet for several days. I find the landlord acted diligently to have contractors repair the problems although they were somewhat hampered by the tenant not being available and the tenant insisting she needed to be home for them to enter the premises. I find the landlord's evidence credible that she is willing to do repairs and keep the property in good shape but the

tenant has not reported further issues since January 23, 2016 except in a brief conversation about rental obligation and the apprentice not reconnecting the drain hose on the washer resulting in water in the basement. Even then, the evidence is that the apprentice attended and cleaned up the problem he caused. Although the advocate stated the landlord "should have known" that the water issues continued when she was served with the Application by the tenant on March 4, 2016, I find the tenant focused on the January issues and compensation in the Application and in any case, it is the tenant's responsibility to report specific repairs being needed.

The tenant said there were ongoing issues and the landlord said she is willing to do further repairs and have the water tested. Therefore, I will order the landlord to do certain repairs and have the water tested by the City as an independent third party.

**Conclusion:**

I find the tenant not entitled to compensation for water issues as I find the landlord attended to them promptly when informed. There was no filing fee involved.

Based on the evidence of both parties:

**I HEREBY ORDER the landlord:**

- 1) To have the well water of the tenant inspected and tested for safety by the City.**
- 2) To have the plumber clean out the water lines in the home to remove gravel and any mud and also to clean out the lines in the washer. If this does not restore normal water pressure, to take further measures to restore water pressure.**
- 3) To have the plumber take time to inspect the lines in case of cross overs that may cause hot water to come into the toilet and to fix the toilet run on.**

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: March 31, 2016

---

**Residential Tenancy Branch**