



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CRESSEY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on October 5, 2015. The Tenants filed seeking a Monetary Order for money owed or compensation for damage or loss under the *Act*, Regulation or tenancy agreement and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord (the Landlords) and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenants testified they submitted documentary evidence to the Residential Tenancy Branch (RTB) in person on approximately April 7, 2016. The Tenants stated they served their evidence to the Landlords via registered mail the next day. The Tenants' evidence had not been placed on the file at the time of this hearing. The RTB electronic record indicated the Tenants had submitted their evidence to the RTB on April 12, 2016 and not April 7, 2016.

The Landlords testified they submitted one page of evidence to the RTB in response to the Tenants' application. The Tenants denied receiving documentary evidence from the Landlords. The Landlords affirmed they did not serve the Tenants with copies of their evidence.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants and the Landlords which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

To consider documentary evidence that was not served upon the other party or not received within the stipulated time frames would be a breach of the principles of natural justice. Therefore, I declined to consider the documentary evidence submitted by both parties. I did however consider each person's oral testimony.

Both parties were provided with the opportunity to present relevant oral evidence and to ask questions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

Have the Tenants proven entitlement to \$3,250.00 monetary compensation?

#### Background and Evidence

The Tenants began occupying the rental unit on September 1, 2014 based on a fixed term tenancy agreement. The parties entered into a subsequent written fixed term tenancy agreement that began on May 1, 2015 and ended on September 30, 2015. The Tenants were required to vacate the rental unit as of September 30, 2015 because the building was scheduled to be torn down in October 2015. Rent of \$1,750.00 was payable on or before the first of each month. The Tenants originally paid \$875.00 as the security deposit which was returned to them within two weeks after their tenancy ended.

The Tenants now seek \$3,250.00 which is comprised of \$1,750.00 for living in the unit without heat during the month of September 2015; \$1,000.00 for having to live in the rental unit without power for 4 days due to an emergency situation; and \$500.00 for living in the building with only one working washer and dryer.

The Tenants argued the Landlords refused to turn the heat on in the building during the entire month of September 2015. They asserted it was very cold in their unit and they suffered a loss of enjoyment due to the lower temperature. As a result, they are seeking \$1,750.00 which is equal to their full month's rent that was paid for the month of September.

The Landlords disputed the Tenant's claim for \$1,750.00 and argued the Tenants filed this claim because they were mad the Landlords would not reduce their rent in September after the Tenants' roommate moved out and not because of lack of heat. The Landlords said they offered to put space heaters in the hall just outside the Tenants' unit so the Tenants would not have to pay additional electricity and the Tenants declined.

The Landlords stated the heating system controlled the entire building and was set to turn on automatically when the temperatures dropped below 15 degrees Celsius. The Landlords said they submitted evidence proving the temperatures in September 2015 were still warm and above 15 degrees every day. They said they had spoken to other tenants in the building to determine if they should turn the heat on and each tenant told them there was no need to turn it on as it was still very warm.

The Tenants stated a fuse burnt out in their fuse box located in their suite on Friday April 10, 2015. They said that incident caused their power to go out and created smoke in their unit. They called their Landlord several times and there was no answer. The Tenants asserted the Landlord was out of town and had not left a contact number for emergencies. The fuse box was not fixed until April 14, 2015 which caused the Tenants to have to eat their meals at restaurants because they could not cook without power. The Tenants submitted their claim of \$500.00 was comprised of \$600.00 for food for three people plus \$400.00 for the inconvenience.

The Landlords testified their telephone was handed over to another manager when the Landlord went on holidays. They argued they have never left the building unattended for any period of time. The Landlord stated when the Tenants called about the fuse they were told the Landlord would attend their rental unit the next day. Then when the Landlord called the Tenant to try and gain access to the unit the Tenants refused because they were at work.

The Tenants third amount was for compensation due to a reduction in the number of working washing machines and dryers. The Tenants argued there were 4 washing machines and 4 dryers; however, only one washer and one dryer were working by the end of the tenancy. They asserted their tenancy agreement provided laundry facilities; therefore, because they either had to wait to use the machines, as they were shared with the entire building, or take their laundry elsewhere, they feel they are entitled to compensation equal to \$50.00 per month for the 4 months there was only one set of machines operational.

The Landlords disputed the Tenants' submissions regarding only one set of machines being operational. The Landlords stated the Tenants never once informed them about their concerns about the number of washing machines or dryers. They said the first time they heard about this was in this hearing. The Landlords submitted there were two working washers and two working dryers. They said they had established a laundry schedule to assist all tenants in having access to the machines. However, these Tenants never followed that schedule because they were always at work.

The Landlords asserted these Tenants were rarely at the rental unit as they worked very long days and did not normally return home until after 7:00 or 8:00 p.m. The Tenants made no mention of some of the above complaints until after the tenancy ended. They made no effort to minimize their loss and therefore, the Landlords consider this claim to be vexatious as it is nothing more than the Tenants trying to get money.

The Tenants submitted they worked similar schedules and were employed on a train. They submitted their work began in April and continued until the end of September each year. Their duties required either them being away for four days on a train trip or working 13 hour days. They stated they travel during their off months between October and May. The Tenants did not have access to their actual 2015 schedule during the hearing. They confirmed they had not submitted a copy of their work schedule in their late documentary evidence.

The Tenants read a text message into evidence that was dated April 13, 2015 whereby the Landlord wrote she had a key to the rental unit and would be entering to fix their problem with the fuse box.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

In this case I find the Tenants submitted insufficient evidence to prove they mitigated or minimized any alleged loss of services or loss of quiet enjoyment between April 2015 and September 2015, pursuant to sections 7(2) and 62(2). I make this finding in part as the fuse box event and alleged lack of laundry machines had occurred or been allegedly ongoing for over 4 months before the Tenants filed their application. Also, there was insufficient evidence to suggest the Tenants took any action to remedy the situation at the time those instances were allegedly occurring.

In addition, I favored the Landlords' submissions that the claim for compensation equal to September's monthly rent related to the Landlords' refusal to reduce the rent after the Tenants' roommate moved out and had nothing to do with the lack of heat.

Furthermore, in consideration of the Tenants' work schedule requiring them to be away for 4 days at a time or working 13 hour days when in town; in absence of proof of their actual work schedule from April through to September 2015, I find the Tenants' submitted insufficient evidence to prove any monetary amounts claimed. Accordingly, I dismiss the Tenants' application for monetary compensation in its entirety, without leave to reapply.

### Conclusion

The Tenants were not successful and their application was dismissed in its entirety, without leave to reapply.

This decision is final, legally binding, and 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: April 22, 2016

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Residential Tenancy Branch