



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, FF.*

### **Introduction.**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the loss of the use of the kitchen, for the cost of meals in restaurants, for the cost of moving, for lost wages, for legal costs and for the filing fee.

This application by the tenant was initially scheduled to be heard on April 06, 2016 and was adjourned to May 12, 2016. The hearing was adjourned one more time to be heard on June 16, 2016. Interim decisions were sent to both parties.

Due to problems with the telephone system, the conference call on June 16, 2016 ended abruptly. The hearing was rescheduled for this date August 09, 2016. This decision was started on June 16, 2016 after the partial hearing and completed on this date.

Both parties attended the hearings 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.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over four separate days and almost 3 hours of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy at this rental unit started on March 21, 2015. The monthly rent was \$1,300.00 due on the first of each month. The tenancy ended on September 01, 2015.

On May 24, 2015, the tenant contacted the landlord to inform her of a leak in the kitchen. The landlord responded on May 25, 2015 and a plumber visited the unit on May 26, 2015. The plumber created a hole of approximately 18 inches by 18 inches in the kitchen wall by the refrigerator. The plumber reported the problem to the landlord and indicated that additional remedial work was required.

The landlord contacted two contractors and made arrangements for them to visit the rental unit to assess the problem. These visits took place during the period of June 01 to June 09, 2015. The contractors increased the size of the hole in the wall to 2 by 3 feet to inspect the areas behind the walls for the source of the leak.

The tenant stated that the opening in the wall emitted an odour and the mould inside the walls was visible. The tenant purchased a plastic sheet and covered the hole in the wall.

On June 15, 2015 the remedial work commenced. The contractor cut a hole in the kitchen floor and visited every day to monitor the water collecting under the floor. The contractor sucked out the water daily until June 24, 2015 and had it tested. On June 16, 2015 the refrigerator was moved to the living room where it was plugged in and available for use.

The stove was also moved into the dining room on June 16, 2015. Upon relocation of the stove, it was not available for use.

On June 16, 2015 the kitchen was sealed off with a tarpaulin. The landlord stated the tarpaulin was installed to increase the effectiveness of the dehumidifier. She also added that the mould was covered with plastic and was not hazardous as per the recommendations of the remediation company that was hired to carry out the remedial work.

The tenant argued that the mould was toxic but did not provide any reports to support his testimony. The tenant provided a copy of the health inspector's report. The inspection took place on June 23, 2015 and the inspector reported that there was no odour of sewage emanating from the open area and what appeared to be black algae was observed but the water that was collecting in the open area appeared clear.

On June 18, 2015, the tenant complained to the City and an inspector visited the unit on June 22, 2015. In a letter dated June 29, 2015, the City issued a stop work order indicating that the landlord had started work without getting the required permits.

The landlord stated that the reason no permits were obtained was because the cause and location of the leak was unknown and therefore the scope of remedial work to be done was also unknown. Once the extent of remedial work to be done was determined, the landlord applied for permits and obtained them by July 15, 2015.

The landlord informed the tenant by a text message on July 02, 2015 that the work to be done was extensive and would require the tenant to move out. The landlord stated that she did not have any accommodation available until August 01, 2015. The tenant stated that the accommodation offered was not large enough to hold all his belongings.

On July 15, 2015, the landlord gave the tenant a letter informing the tenant that the work was scheduled to start on July 29 and requested the tenant to allow the workers access to the unit. The tenant denied access to the workers on July 29, 2015 and on that day the landlord served the tenant with a one month notice to end tenancy for cause. The remedial work did not start on that day and communication between the parties ended for the remainder of the tenancy.

No remedial work was carried out during the month of August and the tenant did not have access to the kitchen and the stove. After the tenant moved out on September 01, 2015, the work commenced and was completed within four weeks. A new tenant was found for October 01, 2015.

The tenant is claiming the following:

1.	Breach of contract	\$4,225.00
2.	Cost of food	\$1,100.00
3.	Moving costs	\$138.91
4.	Buckets to move aquariums	\$49.63
5.	Loss of income to move	\$200.00
6.	Replace rug	\$85.00
7.	Future moving costs and loss of income	\$338.91
8.	Legal fees	\$3,000.00
9.	Filing fee	\$50.00
	<b>Total</b>	<b>\$9,187.45</b>

## **Analysis**

Based on the testimony of both parties and documents filed into evidence, I find as follows:

1. Breach of contract - \$4,225.00

The problems started on May 24, 2015 and the landlord took immediate action to investigate the cause of the problem. As of June 16, 2015, the tenant has no access to the kitchen and lost the use of a stove. The tenant continued to occupy the rental unit until September 01, 2015.

The tenant also did not grant access to the unit for the remedial work to be carried out. The landlord arranged for work to start on July 29, 2015, but the tenant refused to grant entry to the workers. The landlord was forced to reschedule the work to start after the tenant moved out.

The tenant stated that the work would leave the unit without water and therefore in the interest of his animals and the other occupant of the unit, he refused to allow the work to start. The landlord stated that the scope of the work was unknown and that while there was a possibility of the water being shut off, it was not a given. The landlord added that in the end the water supply did not get shut off while the work was ongoing.

The landlord testified that the work took approximately four weeks for completion but the start was delayed due to the lack of cooperation on the part of the tenant.

Based on the above, I find that the tenant was denied the use of the kitchen for the period of June 16 to the end of tenancy. The landlord testified that the kitchen area is approximately one third of the square footage of the rental unit. The tenant paid full rent while he occupied this unit but one third of the unit was unavailable for his use.

Therefore I award the tenant one third of the rent for the period of June 16 to September 01, 2015, which works out to approximately \$1,083.00.

2. Cost of food - \$1,100.00

The tenant was without a stove from June 16 to the end of tenancy and did not have full access to the kitchen. The tenant has filed receipts for purchase of food for this period. The tenant did not have a microwave in the rental unit. I find that the tenant incurred additional costs for food purchased from restaurants and is therefore entitled to his claim.

3. Moving costs - \$138.91
4. Buckets to move aquariums - \$49.63
5. Loss of income to move - \$200.00

The tenant testified that all his moving costs were covered by his insurance except for the cost to move his aquariums. The tenant chooses to have large aquariums and therefore must bear the cost related to moving them.

6. Replace rug - \$85.00

The tenant stated that one of the landlord's employees stepped on his rug after having walked in the "toxic" area and may have transferred some toxic material to his rug. The tenant is claiming \$85.00 to replace the rug but has not provided proof of having done so. In addition the tenant has not proven that the material transferred to the rug was toxic. The tenant's claim is dismissed.

7. Future moving costs and loss of income - \$338.91

The tenant has not incurred these expenses and therefore his claim is dismissed.

8. Legal fees - \$3,000.00

The legislation does not permit me to award any litigation related costs other than the filing fee.

9. Filing fee - \$50.00

The tenant has proven a portion of his claim. I award him the recovery of the filing fee.

Overall the tenant has established a claim for the following:

1.	Breach of contract	\$1,083.00
2.	Cost of food	\$1,100.00
3.	Moving costs	\$0.00
4.	Buckets to move aquariums	\$0.00
5.	Loss of income to move	\$0.00
6.	Replace rug	\$0.00
7.	Future moving costs and loss of income	\$0.00
8.	Legal fees	\$0.00
9.	Filing fee	\$50.00
	Total	<b>\$2,233.00</b>

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$2,233.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the tenant a monetary order in the amount of **\$2,233.00**.

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: August 09, 2016

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Residential Tenancy Branch