



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Have the tenants established an entitlement to monetary compensation from the landlord as claimed?

### Background and Evidence

The tenancy started on November 15, 2015 and the tenants were required to pay rent of \$1,100.00 on the first day of every month. The tenancy came to an end on July 31, 2016 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property served upon the tenants at the end of May 2016. The tenants vacated the rental unit on July 31, 2016. The parties were in disagreement as to whether the tenancy was for a fixed term or a month to month basis.

The tenants seek compensation of \$5,000.00 from the landlord for two reasons: the landlord breached their fixed term tenancy agreement; and, lack of hot water.

### **Breach of fixed term tenancy**

The tenant submitted that the parties executed a written tenancy agreement for a fixed term tenancy. During the hearing the tenant testified that the fixed term had an expiry date of December 1, 2016; however, in making the application the tenants had

submitted that the tenancy had a fixed term expiry date of November 15, 2016. The tenants are of the position that the landlord should not have ended their tenancy prior to the end of their fixed term. However, the tenant also confirmed that they did not file to dispute the 2 Month Notice.

I noted that I was not provided a copy of the tenancy agreement. The tenant stated that after they signed the tenancy agreement they were not provided a copy of it.

The landlord testified that a written tenancy agreement was not executed and the tenancy was an oral agreement for a month to month tenancy. The landlord stated that the tenants signed a tenancy application but a tenancy agreement was not signed.

### **Lack of hot water**

The tenant submitted that on March 27, 2016 the taps for the bathtub broke. With water spraying from the broken taps the water was turned off at the source until a plumber attended the rental unit on March 29, 2016. When the plumber attended the rental unit the tenant was home. The tenant described how the plumber had to "mickey mouse" a temporary fix so that they could use the bathroom but that new parts were needed to properly fix the taps. The plumber was supposed to return the following day but he did not. Unfortunately, the temporary fix only permitted the tenants to have a 3 to 4 minute shower before the water would turn ice cold. Turning the taps off and on did not provide more hot water. Rather, the tenants would have to wait a couple of hours to try again. Having a bath was not a solution as the tub would only fill up a few inches before the water turned cold.

The tenant submitted that several communications with the landlord about the problem were unsuccessful. The landlord had indicated to the tenant that he was unhappy about the cost of the plumber and would not be calling the plumber back until after he complained to the Better Business Bureau. Finally, after contacting the Residential Tenancy Branch, the tenant wrote a letter to the landlord on May 27, 2016 demanding the taps be fixed. The tenant provided a copy of the letter she wrote to the landlord. Shortly after giving the landlord the demand letter they were served with the Notice to End Tenancy.

The tenant submitted that the lack of hot water had a significant impact on their ability to use and enjoy the rental unit especially since her spouse, the co-tenant, is a landscaper and comes home from work very dirty. He would not be sufficiently clean after one 3 minute shower and had to wait a few hours to take another shower. The tenant was of

the position that the devaluation of the tenancy approximates \$200.00 per month for the period of March 27, 2016 through July 31, 2016.

The landlord responded by stated that the tenants broke the taps although he acknowledged he could not prove this. Rather, the landlord explained that he suspects the tenants broke the taps because they were often fighting in the rental unit.

The landlord was of the position that when the plumber attended the rental unit on March 29, 2016 he fixed the taps sufficiently and there was not a lack of hot water after that. The landlord also stated that he now resides in the rental unit and there is sufficient hot water when he showers although he acknowledged that there is still a hole in the wall where the repair was made.

The landlord stated that he had paid approximately \$400.00 for the plumber, which he thought was very high, and he acknowledge that he did complain about the bill. I noted that the landlord did not produce a copy of the plumber's bill as evidence for this proceeding. The landlord stated that he did not think it was necessary to provide it as evidence.

The landlord also stated that he served the tenants with the Notice to End Tenancy due to their conduct and that it was not in response to the demand letter to fix the taps.

The tenant denied that their conduct was a basis for eviction or breaking the taps.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 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.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the tenants' claims against the landlord.

### **Breach of fixed term tenancy**

The parties provided opposing oral testimony as to whether the tenancy was for a fixed term and I was not provided a written tenancy agreement that would confirm either party's position. However, if the tenants were of the position they had a fixed term tenancy upon receiving the 2 Month Notice their remedy would have been to dispute the Notice instead of accepting it and then seeking compensation for the unlawful eviction.

In light of the above, I dismiss this portion of the tenant's claim as I find I am not persuaded that the parties had a fixed term tenancy agreement and if they did that the tenants took reasonable action to minimize their losses by filing to dispute the Notice to End Tenancy.

### **Lack of hot water**

Section 32 of the Act provides that both parties have certain obligations to repair and maintain the residential property. Section 32(1) provides for the landlord's obligation, as follows:

- (1) A landlord must provide and maintain residential property in a state of decoration and repair that
  - (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant

[Reproduced as written]

It was undisputed that the rental unit was equipped to have hot water and the tenants were to be provided with hot water as part of their tenancy agreement. I accept that 3 minutes of hot water is insufficient to have a shower. Thus, I find that providing the tenants with a 3 minutes shower is not suitable for the tenant's occupation of the rental unit.

The landlord suggested that the tenants broke the taps. Tenants are responsible to repair damage they cause by way of their actions or neglect, except for reasonable wear and tear, as provided under sections 32(3) and (4) which I have reproduced below.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

[Reproduced as written]

I find the landlord provided insufficient evidence to demonstrate the tenants are responsible for breaking the taps, such as a copy of the plumber's invoice that indicated the cause of the water leak was from willful damage. As with most components of a house, they are subject to fail with age, deterioration and wear and tear. Therefore, I do not consider the landlord's suggestion that the tenant's damaged the taps any further.

The parties were also in dispute as to whether the tenants were limited to 3 or 4 minutes for showering and I was provided opposing version of events in this regard, which I consider further, as seen below.

Upon hearing from both parties, I found that I preferred the tenant's version of events over that of the landlord. The tenant provided consistent and detailed testimony as to what happened when the plumber attended the rental unit and the inadequate supply of hot water after a temporary fix was made. The tenant also provided these same details in the letter she sent to the landlord on May 27, 2016. I find it unlikely the tenant would write the rather lengthy demand letter with such detail if the problem did not exist. In contrast, the landlord was very curt in his responses to my questions during the hearing and did not freely offer more detailed explanations of his position. Further, the landlord did not provide a copy of the plumber's invoice which could have shed light on the repair that was made on March 29, 2016. Therefore, I accept, on the balance of probabilities, that the tenants suffered a lack of hot water in the shower from March 27, 2016 through to the end of their tenancy on July 31, 2016.

It is also apparent to me that the tenant communicated with the landlord a number of times regarding the issue and the landlord's response was to do nothing or deny there was a problem. The tenants then put their demand for repairs in writing as suggested by the Residential Tenancy Branch and shortly thereafter they were served with an

eviction notice. As such, I am satisfied that the tenants made reasonable efforts to have the problem address and mitigate their losses.

I find the tenant's request for \$200.00 per month for lack of hot water to be within reason when compared to their monthly rent.

In light of all of the above, I am satisfied that the landlord violated the Act with respect to adequately repairing the rental unit; the lack of adequate repair resulted in the tenants suffering a loss of use and enjoyment of the rental unit; the tenants took reasonable action to minimize their loss, and the amount of compensation requested for lack of hot water is within reason. Therefore, I award the tenants compensation of \$800.00.

I further award the tenants recovery of the \$100.00 filing fee they paid for this application. Accordingly, the tenants are provided a Monetary Order in the total sum of \$900.00 to serve and enforce upon the landlord.

### Conclusion

The tenants were partially successful in their claims against the landlord and the tenants have been provided a Monetary Order in the sum of \$900.00 to serve and enforce upon the landlord.

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 12, 2017

---

Residential Tenancy Branch