



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RP, RR, O, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- orders requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's advocate, BS and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his advocate was the handyman who made repairs at the rental unit and he had permission to speak on the landlord's behalf at this hearing. This hearing lasted approximately 85 minutes, in order to allow both parties, particularly the landlord who spoke for most of the hearing time, to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application. The landlord confirmed that he did not provide any written evidence for this hearing.

At the outset of the hearing, the tenant confirmed that she did not require any "other" remedies. Accordingly, this portion of the tenant's application is withdrawn.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* states the following:

*Interruptions and inappropriate behaviour at the dispute resolution hearing*

*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

During the hearing, I advised both parties to respect each other and myself, that one person was to speak at any given time, and that parties were not to interrupt while others were talking. Throughout the hearing, the landlord yelled at me and repeatedly interrupted the tenant and me. The landlord displayed hostile, rude, disrespectful and inappropriate behaviour. I repeatedly warned the landlord to stop his inappropriate behaviour but he continued. I notified him that he could be excluded from the hearing if he continued with his behaviour. However, I allowed him to attend the full hearing, despite his inappropriate behaviour, in order to provide him with an opportunity to respond to the tenant’s application.

Near the end of the hearing, I entered the “lecture” mode on the telephone and explained to both parties that they would only be able to hear me; I would not be able to hear them. I did this in order to explain information to the landlord, who refused to listen to me and continued to yell and talk over me during the hearing. I notified the landlord that his disruptive behaviour was lengthening the time of the hearing because he refused to answer questions, kept arguing and yelling, and kept talking at the same time as myself and the tenant. I advised both parties that I was exiting the “lecture” mode and would hear their responses to my statements. Once I exited, the landlord and his advocate were still participating in the teleconference as they could be heard talking to each other. When I asked the landlord and his advocate whether they heard my comments, they stopped talking and refused to respond to me; they then disconnected from the teleconference at 12:19 p.m. I concluded the teleconference at 12:25 p.m. after confirming the tenant’s contact information but neither the landlord nor his advocate phoned back into the teleconference so I ended the proceeding.

I caution the landlord not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings.

### Issue to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to orders requiring the landlord to make emergency or regular repairs to the rental unit?

Is the tenant entitled to an order to allow her to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and the landlord's advocate, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on June 1, 2013. Monthly rent in the amount of \$1,100.00 is payable on the 30<sup>th</sup> day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord already returned the deposit to the tenant. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit. The rental unit is a basement suite in the same house where the landlord occupies the upper floor.

The tenant seeks a monetary order of \$633.59 for repairs that the landlord has not yet completed. The tenant seeks \$33.59 for purchasing a shovel to do snow removal for the landlord and \$120.00 each for the loss of the use of five items: the stove, dryer, bathroom showerhead, kitchen faucet and thermostat. The tenant also seeks for the landlord to complete snow and algae removal, as well as repairs to the stove, dryer, bathroom showerhead, kitchen faucet and thermostat. The tenant seeks a future rent reduction of \$110.00 per month for each repair not completed by the landlord. The landlord said that he only agreed to a \$50.00 rent reduction for each item if the repairs are not completed.

The landlord's response to the tenant's complaints about repairs was generally the same for all items. He explained that he would inspect and fix the items but that the tenant was a "chronic complainer." The landlord maintained that the tenant should be completing the repairs herself or move somewhere else because his house was old and these problems were to be expected.

### Analysis

### Compensation

Section 32 of the *Act* deals with both parties' obligations to repair and maintain the rental unit:

*32 (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.*

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

*(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.*

*(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the tenant \$33.59 for the shovel that she purchased to clear the snow at the rental unit. The tenant provided a receipt for this amount. The landlord agreed to pay this amount during the hearing.

I award the tenant compensation of \$120.00 each for the past loss of the use of the stove, the ensuite bathroom showerhead, the thermostat and the dryer at the rental unit, totaling \$480.00. I find that the above amount is a reasonable amount based on the tenant's monthly rent of \$1,100.00 and the fact that she suffered losses over prolonged periods of time, as noted below.

I find that the tenant did not have full use of the stove since March 2016 when the landlord replaced her broken stove with another broken stove. The tenant said that only one element was working, one was not, and the other two were burning hot when set to a milder temperature. The tenant included this information in her letter, dated December 7, 2016, to the landlord and made numerous verbal requests which were unanswered. Although the tenant attempted to fix the problem herself by purchasing and installing new fuses when she is not a qualified technician, I find that she did so in order to rectify the problem which the landlord refused to deal with, despite numerous requests and the work falling under the landlord's obligations. Therefore, I find that the tenant is entitled to \$120.00 for 10 months of the loss of use from March to December 2016.

I find that the tenant did not have full use of the showerhead in the ensuite bathroom because of the broken showerhead valve. This has been an ongoing problem for approximately four years. The tenant included this information in her letter, dated December 7, 2016, to the landlord and made numerous verbal requests which were unanswered. She said that when there was a flood in the main bathroom shower, the landlord had a plumber look at the ensuite shower but did not fix the problem at that time. The tenant said that the showerhead valve was broken so only half the amount of the water was coming out, while the other half was running directly into the drain below. She stated that this caused her and her family to take longer showers in order to get the requisite amount of water. She claimed that hot water costs were increased, for which the landlord may increase her rent in the future as per his tenancy agreement addendum. The landlord said that the utility bills were high at the rental unit. Therefore, I find that the tenant is entitled to \$120.00 for four years of the loss of full use of the ensuite showerhead.

I find that the tenant did not have proper use of the individual thermostat at her rental unit. This has been an ongoing problem since spring 2016. The tenant included this information in her letter, dated December 7, 2016, to the landlord and made numerous

verbal requests which were unanswered. She said that when the landlord had his furnace fixed in spring 2016, her own thermostat stopped working. She said when the landlord does not turn on his heat, it is freezing cold in her unit, such that she has to turn on and open her oven door in order to heat the unit. She claimed that when the landlord turns on his heat, it is so unbearably hot that her thermostat has to be set to 0 and her windows have to be opened to cool the unit down. Therefore, I find that the tenant is entitled to \$120.00 for loss of the proper use of the thermostat in her unit from spring 2016 to December 2016.

I find that the tenant did not have proper use of the dryer at her rental unit. This has been an ongoing problem since January 2016. The tenant included this information in her letter, dated December 7, 2016, to the landlord and made numerous verbal requests which were unanswered. She said that when the landlord replaced her broken dryer with another broken dryer, the heating element did not work correctly, such that she has to dry her clothes for twice as long, waiting an extra hour each time. She claimed that this was an inconvenience for her family, including her husband who has to work out of town without his proper work clothes because they are not dry due to the delay. Therefore, I find that the tenant is entitled to \$120.00 for loss of proper use of the dryer in her unit from January to December 2016.

I dismiss the tenant's claim of \$120.00 for the loss of hot water pressure in the kitchen faucet at the rental unit, without leave to reapply. While the tenant claimed that it took longer for the water to heat up in the kitchen faucet, the landlord said that it was because of the old house and it was within the City's control. The landlord agreed to inspect and inquire about this issue but stated that it may not be fixable. Therefore, I do not award the tenant any compensation for this claim, as this may be an issue outside of the landlord's control and it is more of an inconvenience rather than a loss of use of the kitchen faucet.

#### Repairs and Rent Reduction

Based on the agreement between both parties, I order the landlord to inspect the stove, dryer, thermostat, and showerhead valve in the ensuite bathroom, by January 7, 2017, and to perform repairs or replacements to the above items by January 16, 2017. If the landlord does not complete the above inspections by January 7, 2017 or repairs or replacements by January 16, 2017, I order the tenant to deduct \$80.00 from her monthly rent for each item above, beginning on the first day of the following month, until the inspection, repairs and replacements are completed. If the parties disagree as to whether the inspection, repairs or replacements have been sufficiently completed, both parties have leave to reapply at the RTB for determination.

Based on the agreement between both parties, I order the landlord to complete the following work:

- 1) ongoing snow removal of all access routes in the front, back and sides of the rental unit by 10:00 a.m. the next day after a snowfall, such that the tenant can properly access her rental unit; and
- 2) ongoing algae removal of all access routes in the front, back and sides of the rental unit, on a periodic basis and weather-permitting, such that the tenant can properly access her rental unit.

If the parties disagree as to whether the above work has been sufficiently completed, both parties have leave to reapply at the RTB for determination and compensation. The tenant's application for a future rent reduction for the above snow and algae removal, is dismissed with leave to reapply, as the work is weather-dependent and time-dependent.

I order the landlord to inspect the kitchen faucet for a loss of hot water pressure by January 7, 2017. If the landlord is able to fix the above problem, I order him to do so. If the landlord is unable to repair or replace the faucet due to issues beyond his control, I order him to provide the tenant with a written letter as to the efforts he made to contact the appropriate authorities and the reason for why the problem cannot be fixed, by January 31, 2017. The tenant's application for a future rent reduction for the above kitchen faucet issue is dismissed without leave to reapply.

As the tenant was mainly successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I order the landlord to complete the inspection, repairs and replacements to the stove, dryer, thermostat, and showerhead valve in the ensuite bathroom, as noted above. If the landlord fails to comply, I order the tenant to deduct \$80.00 from her monthly rent for each item beginning on the first day of the following month, until the inspection, repairs and replacements are completed. If the parties disagree as to whether the inspection, repairs or replacements have been sufficiently completed, both parties have leave to reapply at the RTB for determination.

If the parties disagree as to whether the snow or algae removal has been sufficiently completed, both parties have leave to reapply at the RTB for determination and compensation. The tenant's application for a future rent reduction for snow and algae removal is dismissed with leave to reapply.

The tenant's application for a future rent reduction and compensation of \$120.00 for the kitchen faucet issue is dismissed without leave to reapply.

I order the tenant to deduct \$580.00 from her future rent payable to the landlord at the rental unit for this tenancy, in full satisfaction of the monetary award made at this hearing.

The tenant's application for other unspecified remedies is withdrawn.

The tenant's application for an order requiring the landlord to make emergency repairs to the rental unit is dismissed with leave to reapply, as no emergency repairs were requested by the tenant.

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 06, 2017

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Residential Tenancy Branch