



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Re/max Masters Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the hearing Agent SF identified Agent JL as attending as an agent for the Landlord. It was not until Agent JL was asked by Agent SF to give evidence that it was determined that Agent JL was being called to give evidence as a real estate agent for the Landlord and not an “Agent” of the Landlord as defined under the Act: this person did not carry out any duties of the Landlord under the tenancy agreement or Act. As a result Agent JL was determined to be a witness for the Landlord and as this person had not been excluded from the proceedings to this point I declined to take evidence from Agent JL.

### Issue(s) to be Decided

Did the Landlord breach any provisions of the Act or tenancy agreement?

If so, is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on December 1, 2015 on a fixed term to end July 31, 2017. The Parties mutually agreed and ended the tenancy on July 1, 2016. Rent of \$6,500.00 was payable on the first day of each month. The Parties mutually conducted a move-in inspection and completed a report. The report noted the following repairs to be completed: gutters cleaned, wall paint, repair outlets on wall and ceiling, clean vents if not cleaned.

The Tenant states that prior to entering into the tenancy agreement the Landlord was specifically asked if the unit would be sold as the family wanted no disruption. After receiving assurances that the unit would not be placed for sale and that the Tenants would not be forced to move out of the unit the Tenants agreed to the fixed term. The Tenant states that this term was not included in the written tenancy agreement because they believed the oral agreement was binding. Legal Counsel argues that because there is nothing in the tenancy agreement that stipulates that the agreement contains all the terms of the agreement the oral agreement formed part of the agreement despite not being in writing. The Tenant states that the Landlord informed the Tenants in January 2016 that the unit would be sold as they wanted to capitalize on the presence of folk who would be around for Chinese New Year. The Tenant states that the Landlord also told them that they would try to sell the unit to investor's only.

The Tenant submits that on January 28, 2016 the Landlord informed the Tenants that showings of the unit would occur. The Tenants submits that initially no written notices providing 24 hour notices were given to the Tenant. The Tenants agreed to 7 such showings until February 18, 2016 at which time they informed the Landlord that 24 hour written notice was required for any further showings. The Tenant states that the Landlord told the Tenants by email dated March 2, 2016 that if they did not cooperate with further showings they would be evicted. The Tenant provides a copy of this email. The Tenant states that on February 29, 2016 the Tenants returned home after a scheduled showing and found their personal belongings moved around. The Tenant

submits that their legal counsel was obtained in March 2016 and that on March 7, 2016 the Tenants were informed that the unit was sold.

The Tenant's Legal Counsel argues that any consent that may have been given to allow the showings was vitiated by the Landlord's threats to evict the Tenants. Legal Counsel argues that even though the Tenant could dispute any notice to end tenancy, they did not know that the Landlord could not just evict them and this caused them to comply.

The Tenant states that their quiet enjoyment of the unit was disrupted by the Landlord's actions in putting the unit up for sale and by the numerous showings without proper notice and under threat of eviction. The Tenant states that their right to privacy was breached by the movement of their personal belongings, including clothing and paperwork, during their absence for a showing. The Tenant states that they called the Residential Tenancy Branch (the "RTB") about their rights and were told to inform the Landlord to call the RTB for an explanation about the rules.

The Tenant states that the unit was not clean at move-in. The Tenant states that the Landlord failed to make repairs as agreed or requested. The Tenant states that at the outset the Landlord was asked whether the ducts and vents had been cleaned and the Landlord said yes. The Tenant states that in January 2016 the Landlord was informed that the basement areas was cold and although the Landlord assured the Tenants that there was nothing wrong with the furnace the Landlord never attended to inspect the unit. The Tenant states that they were unable to use the basement as a result. The Tenant states that in April 2016 after taking photos of the air ducts the Landlord agreed to have them cleaned. The Tenant states that at this point they discovered that the furnace had not been serviced since 2011. The Tenant states that at this point they did not ask the Landlord to replace the filter as the Landlord was saying no to everything. The Tenant states that the Landlord specifically refused to have the furnace serviced as they insisted that the furnace had been serviced at move-in. The Tenant states that given the Landlord's refusals they purchased and replaced the filter themselves. The Tenant states that thereafter the air became warm.

The Tenant states that at move-in a TV was to be removed by the Landlord so the Tenants placed the TV in one of two laundry rooms. The Tenant states that despite being asked multiple times to come and pick it up the Landlord did not remove the TV until April 4, 2016 leaving the laundry room unusable. The Tenant states that although they had use of another laundry room this room was inconvenient, old and noisy.

The Tenant states that the Landlord was informed at the onset of the tenancy that they wanted the hot tub to be cleaned. The Tenant states that when they opened it on December 13, 2015 it was found unclean with leaves. The Tenant states that the Landlord did clean the tub but found it also broken. The Tenant states that despite asking several times the Landlord never repaired the hot tub.

The Tenant states that on December 30, 2015 the Landlord was informed about exposed electrical wiring in the back yard, bedroom and kitchen. The Tenant states that it took the Landlord to March 1, 2016 to make the repairs. The Tenant states that when the repairs were done the Landlord replaced items with cheaper components. The Tenant states that for example they originally they had dimmer switches and these were changed to cheaper on and off switches.

The Tenant states that on December 18, 2015 and while the Landlord was present the Tenants notices a smell of rotten eggs and believed there was a gas leak. The Tenant states that the Landlord told them this was a normal smell and that the furnace had just been serviced. The Tenant states that after later texting the Landlord about their belief of a gas leak and the gas company came and found a gas leak.

The Tenant argues that the Landlord misrepresented the tenancy, breached their rights to privacy and freedom from disturbance, and failed to make repairs leaving portions of the unit uninhabitable for periods of time. The Tenant claims a global amount of \$19,500.00 and bases this amount as equivalent to the early lease termination fee contained in the addendum of the tenancy agreement.

The Landlord states that the Tenants did not raise the issue of any sale at the outset of the tenancy and submits that this is a completely false claim. The Landlord states that the end date for the fixed term was selected as this was the date that the Tenant's work contract ended in the country and the Tenants informed the Landlord that this is when they intended to return to their home country. The Landlord argues that if this was a concern it would be reasonable for a tenant to ask for a term restricting the sale of the unit to be included in a written tenancy agreement. The Landlord states no such request was made.

The Landlord states that when there is an open house if things are left on the counter they will be moved. The Landlord states that he is not aware of any instructions given to the Tenant about being tidy or ensuring private information is not in the open. The Landlord states that they did receive a letter from the Tenants about the showings and did call the RTB. The Landlord states that they did start posting dates and did follow the instructions provided by the RTB. The Parties agree that at no time did the Landlord enter the unit without the Tenant's permission.

The Landlord submits that the unit was cleaned prior to the onset of the tenancy and no lack of cleaning was noted in the move-in report provided by the Landlord as evidence.

The Landlord states that a gas fitter had attended the unit on December 17, 2015 and serviced the furnace including the replacement of the filter. The Landlord states that the next day the leak was reported to the gas company and the leak was resolved by the December 20, 2015. The Tenant points to an email (exhibit B2) indicating the furnace was serviced for a gas leak on December 22, 2015

The Landlord states that the first time they heard anything about a loss of heat was in an email dated April 4, 2016. The Landlord states that they immediately replied to the email asking for more details but no response came until April 26, 2016 when the Tenant said that while there was warm air it had been insufficient since January 2016.

The Landlord states that the Tenant arranged the company's attendance to clean the ducts on April 29, 2016.

The Landlord provides the invoice for the electrical work done on March 1, 2016 and states that the dimmer switches were replaced with the on and off switch as they were the cheaper and safer option. The Landlord agrees that the dimmer switches could have been replaced with similar and safe dimmer switches if time and money had allowed.

The Landlord agrees that it took some time for the TV to be collected but that the Tenants could have stored it in the large garage instead of using a laundry room.

The Landlord states that the hot tub had been cleaned a week prior to the Tenants move-in. The Landlord agrees that the hot tub was not working properly and that a part was obtained for the hot tub but that the Tenant could not be reached. The Landlord states that the Tenant was told to schedule the repairs directly with the repair person. The Tenant states that they tried to schedule the hot tub repairs but nobody attended. The Tenant states that they spoke with the Landlord about this and although the Landlord said he would call back nothing was heard. The Tenant states that with all problems they just let it go.

It is noted that both Parties made extensive and well written submissions.

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Where the term was so important to the Tenants and had the Tenants obtained the agreement of the Landlord not to sell or show the unit prior to the signing of the written agreement and addendum it would be reasonable to expect such a term to be included in the written documents. Given the lack of any supporting evidence that at the outset of the tenancy the Tenant raised the issue of the sale or

showing of the unit during the tenancy, I find that the Tenant has not substantiated on a balance of probabilities that there was any misrepresentation on the part of the Landlord or that the Landlord breached any implied or oral term of the tenancy agreement.

Although not raised at the hearing, I note that the Tenant's submissions include a claim for one month's rent, presumably as part of the global amount, for the Tenants moving out of a unit that the purchaser then moved in to. As the Tenants entered into a mutual agreement to end the tenancy far in advance of the fixed end term of the tenancy, I find that the Tenants have not substantiated that they had to move due to the sale of the unit. I find therefore that they are not entitled to compensation for moving.

Given the supporting evidence of deficiencies I find that the Tenants did lose some of the rental value paid for the unit. I accept the Tenant's persuasive evidence of wanting to ensure the furnace was serviced and ducts cleaned at the outset of the tenancy and that there was some heat loss due to this deficiency. Based on the Landlord's evidence that the ducts were not cleaned until the end of April 2016 I find that the Tenants experienced some loss. The evidence however does not suggest a large loss and I find therefore that the Tenants are only entitled to a nominal compensation of **\$100.00** for this loss. Based on the undisputed evidence that the Landlord left a TV at the unit for about 4 months but considering that the Tenants could have chosen a less used space such as the garage for the storage I find that the Tenants have only substantiated an inconvenience for this period and nominal compensation of **\$100.00**. Based on the undisputed evidence that the lighting was changed from dimmer switches to a lesser product I find that the Tenants have substantiated that they experienced a loss in the value of the unit. This loss however was minor and I find that the Tenants are therefore only entitled to nominal compensation of **\$100.00** for this loss. Given the undisputed evidence of the lack of repair of wiring for 4 months I find that the Tenants have substantiated nominal compensation for inconvenience of **\$100.00**. Given the undisputed evidence that the Tenants did not have the use of a hot tub for the duration of the tenancy, considering that there is no evidence that the Tenants were responsible for its disrepair and therefore repair I find that the Tenants have substantiated a loss of

\$100.00 per month for the duration of the tenancy in the total amount of **\$1,700.00**. As nothing in the move-in condition report indicates areas that require cleaning in the unit I find that the Tenants have not substantiated any loss in relation to the cleanliness of the unit at move-in and that no compensation is warranted for this claim. Although I accept that the Landlord initially ignored or did not recognize the smell of a gas leak as the leak was resolved very quickly by the gas company I find that the Tenant has not substantiated compensation for this item.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, rights to exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29. Section 29 of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless, inter alia:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry; or

- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Had the Landlord agreed at the outset of the tenancy that the unit would not be sold, it may have been reasonable for the Tenant to refuse any entries for showing the unit for sale. If the Tenants felt that the amount of showings were unreasonable, the Tenant could have made an application to seek an order stopping the showings and thereby attempt to mitigate losses. I note that the Tenants did speak with the RTB to discern their rights in relation to the showings and continued to allow the entry. While I accept that the Tenants may have felt threatened by the Landlord's threat of eviction, given their evidence of having spoken with the RTB I cannot accept that the Tenants would

not have understood that they could dispute any notice to end tenancy that the Landlord might serve.

Since the Tenants gave permission for all of the entries sought by the Landlord I find that the Tenant has not substantiated that the Landlord breached the Tenants' right to privacy in entering the unit. I therefore dismiss the claims for compensation for the entries. Given the undisputed evidence that personal belongings were moved by the Landlord and considering the Landlord's evidence that no instructions were given to the Tenant's in advance of the showings in relation to keeping personal items secured or away from sight I find that the Tenants have substantiated that the Landlord breached their right to privacy. However I consider this a minor breach and find that the Tenants are only entitled to a nominal sum of **\$100.00** for this breach.

As the Tenants' application has met with some success I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,200.00**.

#### Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$2,200.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 17, 2017

---

Residential Tenancy Branch