



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for damages 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.

### Preliminary and Procedural Matters

At the commencement of the hearing, I confirmed service of hearing documents upon each other and the Residential Tenancy Branch. The tenant sent her Application for Dispute Resolution to the landlord via registered mail on October 3, 2017. Six months later, the tenant sent a significant submission by mail on March 3, 2017 which the landlord received on March 17, 2017. The landlord mailed a response and evidence to the tenant via Xpresspost on March 15, 2017 which the tenant received on March 23, 2017 but this submission was made without the benefit of the tenant's submission sent in March 2017.

The tenant questioned the admissibility of the landlord's written submissions and evidence since they were received by her less than seven days before the hearing. A search of the tracking number shows that the Xpresspost was put in a community mailbox on March 20, 2017. The tenant stated that the mail was picked up by the occupant of the upper living unit and then given to her. The landlord responded by stating she used the service address the tenant provided on her application as to the address to use for service.

I noted that the landlord had also included digital evidence. The tenant stated that she was unable to view the digital evidence as she does not have a computer. Accordingly, I informed that parties that I would not admit the digital evidence.

After discussion with both parties as to the Rules of Procedure with respect to service of evidence and deadlines, both parties were agreeable to being deemed sufficiently served with the other party's respective submissions. Accordingly, I deemed the parties sufficiently served with each other's documentation and I have considered it in making this decision with the exception of the landlord's digital evidence.

On another procedural note, the tenant stated that she seeks a remedy to cease the ongoing harassment by the other occupant living on the property. I informed the parties that this hearing was set to deal with the tenant's monetary claims but that the tenant may file another Application for Dispute Resolution and seek orders for compliance.

The landlord also indicated that the tenant has been served with a Notice to End Tenancy. The tenant disputed that assertion. I informed the parties that this hearing was not to determine the enforceability of a Notice to End Tenancy and that the landlord remains at liberty to file her own Application for Dispute Resolution to seek an Order of Possession if she is of the position she is entitled to one.

#### Issue(s) to be Decided

Has the tenant established an entitlement to monetary compensation from the landlord for damages or loss under the Act, regulations or tenancy agreement as claimed?

#### Background and Evidence

The one year fixed term tenancy started May 31, 2016 and the tenant paid a security deposit of \$625.00. The tenant is required to pay monthly rent of \$1,250.00 less an authorized deduction of \$25.00 for insurance. The rental unit is a suite in the lower floor of a house. The upper floor suite is occupied by the landlord's mother and co-owner of the property.

With her Application for Dispute Resolution the tenant provided a Monetary Order Worksheet dated September 30, 2016 which includes eight items that comprise her total monetary claim of \$2,995.00. The Monetary Order Worksheet is accompanied by 29 pages of a chronology prepared by the tenant between the dates of May 22, 2016 and September 27, 2016. Below, I have described each of the items listed on the tenant's Monetary Order worksheet and summarized the tenant's position and the landlord's position with respect to each item.

1. "One month rent" -- \$1,250.00

The tenant stated during the hearing that this claim is to compensate her for construction work that was not completed in rental unit by the time she moved in.

The landlord had submitted that there were no details or evidence provided with the tenant's application to explain why the tenant seeks compensation for one month of rent.

I noted that on the last page of her 29 page submission the tenant writes that she is seeking compensation for spoiled food, emotional depression and bullying/harassment. There is no mention of construction or loss of use of the rental unit in this summary. Upon an initial view of the other 28 pages, the tenant appears to describe a myriad of issues and complaints and I did not see an obvious link between this claim and construction. I asked the tenant to point to her written submission where she sets out the basis for this claim. The tenant conceded that she did not do so.

In light of the above, I found the tenant failed to sufficiently set out the basis for this claim and I dismissed this portion of her claim with leave to reapply.

2. "Damage deposit" -- \$625.00

The tenant stated that she believes the landlord will not return all of her security deposit when the tenancy ends so she requests that it be ordered returned to her at this time.

I dismissed this request summarily since the Act does not impose any obligation upon a landlord to refund a security deposit to a tenant before the tenancy has ended. Since the tenant submitted that her tenancy has not yet ended and she continues to occupy the rental unit I found there is no basis to seek return of the security deposit at this time and the tenant's request is premature. Having dismissed this portion of the tenant's claim summarily, I did not seek a response from the landlord with respect to this item.

Both parties were informed that the tenant remains at liberty to file another Application for Dispute Resolution should the landlord fail to administer the security deposit in accordance with section 38 of the Act.

3. "Moving expenses" -- \$200.00

The tenant stated that this claim pertains to additional moving costs she incurred to move into the rental unit at the start of the tenancy. The tenant stated that the on-going

construction and a dispute involving the tenant's mother and the landlord's agent resulted in a delay for the movers, costing her additional money. I noted that the tenant had indicated she had a receipt from "Take a load off Moving Co." in preparing her Monetary Order worksheet but I did not see a copy of the receipt in her hearing documents. I asked the tenant to point to a receipt for payment to the movers or other corroborating evidence that would show that she incurred additional costs to move in. The tenant acknowledged that she did not have such evidence. In the absence of any corroborating evidence to support this claim, I dismissed this claim summarily and did not seek a response from the landlord.

4. "Transportation to meet [landlord]... for her convenience" -- \$50.00

The tenant explained that this claim is to compensate her for bus fare she paid to travel back to the rental unit to meet the landlord when the landlord sought to gain entry to the rental unit on a number of occasions. The tenant acknowledged that she did not have receipts to substantiate the amount claimed but explained that receipts are not provided on the bus. The tenant was most annoyed by the landlord's request to enter the unit on Thanksgiving weekend to bring in an appliance for her mother and the tenant stayed home to accommodate this request but landlord did not end up going through her unit to bring in the appliance.

The landlord acknowledged that she has requested entry or given the tenant notices of entry but that there is no requirement for the tenant to be at the rental unit when entry is made as her agent has keys to the property. The landlord was of the position that the tenant chose to be at the rental unit. As for Thanksgiving weekend, the landlord testified that the tenant was asked for consent to enter the rental unit to bring a washing machine in to house and the tenant declined to give consent so the landlord had the washing machine brought in through another entrance.

The tenant acknowledged that had chosen to return to the rental unit when the landlord sought entry into the rental unit because she has a dog in the rental unit.

After hearing both parties' respective positions, I provided the parties with information pertaining to the landlord's restricted right to enter the rental unit as provided under section 29 of the Act. I heard that the landlord had been giving the tenant notice of entry by way of email or text message. I informed the landlord that the tenant is entitled to receive a written notice of entry in a manner provided under section 88 of the Act, which does not include email or text message. The landlord had no objection to serving the tenant in a manner that complies with section 88 in the future and indicated she will do so. Further, I heard that the landlord resides in another province and that agents will

serve the tenant on her behalf. Having heard undisputed evidence that there is conflict between the tenant and the landlord's mother, the landlord indicated that she would not use her mother as an agent and I strongly encouraged the landlord to provide the tenant with the name(s) of her agents. The landlord was agreeable to doing so.

5. 6. and 7. "Spoiled food: Hamburger, cheese, milk" -- \$30.00

The tenant submitted that in early June 2016 the fridge in the rental unit was not working properly although she was not entirely certain of the date. The tenant testified that she notified the landlord the next morning and the following day the landlord had a replacement fridge delivered to the property. The tenant submitted that some groceries spoiled and she seeks to have the landlord compensate her for the spoiled food.

The landlord testified that in the morning of June 3, 2016 the tenant notified her that water was leaking from the fridge. The landlord looked into having the fridge repaired or replaced and because it was an older fridge she decided to replace it. The landlord had a new fridge delivered later that same day.

8. "Documents provided" -- \$800.00

The tenant stated during the hearing that this claim is to compensate her for the living conditions she has endured at the property, including: threats, bullying and harassment, no access to the yard, among other things. I noted that in the landlord's submission she indicated that she did not know what this claim represents and she could only speculate based on the tenant's written submissions. Considering this claim is described very vaguely on the Monetary Order Worksheet and the tenant provided 29 pages of a chronology of events appearing to raise a myriad of issues and complaints I did not see an obvious link to a specific breach on part of the landlord and I was of the view that the respondent landlord was not given a sufficiently clear indication as to this claim so as to prepare a response.

In light of the above, I found the tenant did not sufficiently set out the basis for this claim and I dismissed it with leave to reapply.

### 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:

- That the other party violated the Act, regulations, or tenancy agreement;
- That the violation caused the party making the application to incur damages or loss as a result of the violation;
- The value of the loss; and,
- That the party making the application did whatever was reasonable to minimize the damage or loss.

Having dismissed the tenant's claims described as item numbers 1 through 3 and 8, I have analyzed claims described as items 4 through 7 only, as set out below.

#### 4. Transportation to meet landlord

The tenant in this case acknowledged that she decided to return to the rental unit when the landlord would be entering the rental unit because she has a dog in the rental unit. I am of the view that the tenant has decided to have a dog in the rental unit and if she is of the position she should be home when someone will be entering her unit she bears the burden to transport herself back to the rental unit or seek alternative arrangements for care of the dog at those times. Therefore, I make no award to the tenant for recovery of transportation costs from the landlord.

During the hearing it came to my attention that the landlord has given the tenant notice of entry by text message or email. Under section 88 of the Act, which provides for service of documents, text messages and emails are not a recognized method for serving another party. Where a landlord gives a tenant a written notice of entry it must comply with section 29 of the Act and be served in accordance with section 88 of the Act. The tenant will be deemed to be in receipt of the written notice pursuant to section 90 of the Act.

As I informed the parties during the hearing, where a landlord has given a tenant proper notice of entry the tenant cannot interfere with the landlord's right to enter pursuant to the notice of entry.

The landlord retains the right to use an agent to serve notices of entry and enter the rental unit on her behalf. As mentioned during the hearing, I strongly suggest the landlord provide the tenant with the name(s) of agents she will use so that the tenant understands this person has the landlord's authority.

With a view to avoiding future disputes concerning the landlord's right to enter the rental unit, I provide the following orders pursuant to the authority afforded me under section 62(3) of the Act:

**I ORDER the LANDLORD to ensure she complies with sections 29, 88 and 90 for the remainder of the tenancy.**

**I further ORDER the TENANT to ensure she does not interfere with the landlord's right to enter the rental unit upon receiving a proper notice of entry.**

Below, I have reproduced sections 29, 88 and 90 of the Act for both parties' future reference:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

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

(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;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;



- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
- (j) by any other means of service prescribed in the regulations.

**When documents are considered to have been received**

**90** A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]* is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

**5., 6. and 7. Spoiled food**

These claims pertain to food that allegedly spoiled when the fridge stopped working properly. I dismiss this claim as the tenant failed to establish that food spoiled, the value of the spoiled food, or that the landlord was negligent. As I informed the tenant during the hearing, most appliances and building mechanical systems are subject to failure from time to time. If the landlord was negligent or failed to adequately respond to the issue in a timely manner the tenant may be entitled to compensation from the landlord. As for negligence, I did not hear any evidence to suggest the landlord was aware that the fridge was about to break down and did nothing about it. Rather, from what I heard from both parties, I am satisfied the landlord responded to the issue

adequately and in a very timely manner once the tenant brought it to her attention. For all of these reasons, I dismiss these claims against the landlord.

### Conclusion

Portions of the tenant's monetary claim were dismissed with leave and the remainder were dismissed without leave.

I have issued orders to both parties with respect to the landlord's restricted right to enter the rental unit.

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: April 07, 2017

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Residential Tenancy Branch