



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, 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 cost of emergency repairs Section 67;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

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

### Issues

Has the Landlord breached the Act or tenancy agreement?

If so, has the Tenant suffered a loss from the breach?

If so, has the Tenant substantiated the costs claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on November 29, 2014 and ended on August 1, 2016. Rent of \$1,440.60 was payable on the first day of each month. No move-in condition inspection or report was completed. The security deposit has been dealt with between the Parties. There tenancy agreement is silent in relation to the water utility.

On June 28, 2016 the Tenants received a two month notice to end tenancy for landlord's use (the "Notice"). Shortly thereafter the Tenants gave one month notice to end the tenancy for August 1, 2016. The Tenants were not given the equivalent of one month's rent. The Tenants claim \$1,440.60. The Landlord's Power of Attorney (the "PA") states that they did not pay the Tenants this amount because the Tenants did not stay to the effective date of the Notice.

#### Rodents and promises to repair

The Tenants state that at the outset of the tenancy the Landlord informed the Tenants that mice had previously been in the unit. On the first day of occupying the unit the Tenants found rodent droppings and informed the Landlord of the presence of rodents. The Tenants state that despite repeatedly informing the Landlord of rodents nothing was done by the Landlord. The Tenants state that the Landlord only told the Tenants to buy traps or to take other actions. The Tenants state that it was not until January 2016 that the Landlord delivered baited mouse traps to the unit and obtained the services of a pest control company.

The Tenants state that at the outset of the tenancy the Landlord agreed to but never carried out the following repairs:

- build a balcony outside the second floor glass doors that open to a 20 foot drop;
- erect a carport on the side of the unit where large quantities of snow build up on the roof and could fall off the roof burying anyone in that area;
- install cover plates on three exposed light switches; and
- provide a new toilet on the main floor

The Tenants state that they lost use of the upper den because of the lack of safety with the 20 foot drop out the doors. The Tenants point to an email from the Landlord dated December 5, 2014 found on page 20 of the Landlord's evidence package as evidence of the promise for repairs. The Tenants claim \$11,400.00 in compensation for the loss of enjoyment of their unit, the majority of which arose from the infestation. The Tenants

calculate this claim based on the size of the unit at over 2,000 square feet and at \$600.00 per month for 19 months.

The PA states that the Tenants only informed the Landlord of the infestation on August 2015 by text message. The PA states that they did inspect the unit on December 5, 2014 and found no mice. The PA states that they heard about the rodents from the Tenants in August and December 2015 and again in January 2016. The PA states that when the exterminator attended the unit the presence of rodents were confirmed and actions were taken. The PA states that this company never returned after the initial visit as the Tenants informed the company that their bait poisoned their dog. The PA states that the company used non-toxic bait.

The Tenant states that the exterminator told the Tenants at the visit that there was an extensive infestation inside the unit along with a squirrel infestation. The Tenant states that nobody attended to the mice after the one visit by the company.

The Tenant states that they used disposable disinfectant wipes to clean up after the rodents and claim the costs of the wipes used over the tenancy. The Tenant states that they spent \$19.99 for the wipes from a wholesale store and claim a total of \$285.00 calculated as an average cost of \$15.00 per month. The PA states that the Tenant's math is confusing, that the Tenant is responsible for maintaining the cleanliness of the unit and that the Tenant said nothing during the tenancy about incurring these cleaning costs.

The Tenant states that they purchased a variety of electric and live bait mouse traps in April 2015 and claim \$200.00. The Tenants provided no receipts for these costs but stated the oral costs of the various baits at the hearing. The Landlord denies being responsible for these costs as the Tenants never informed the Landlord of the costs nor did they ask for reimbursement.

The Tenants state that they purchased a new steam cleaner and a vacuum to use for cleaning up after the rodents and that they could not use the machines after the end of the tenancy as they were concerned about disease in the machines from the rodents. The Tenants state that they have since replaced the vacuum but have not replaced the steam cleaner as of yet. The Tenants claim \$592.78 for the machines replacement. The Tenants state that they tried to hire a pest control on their own but were told that because they were not the home owners the companies would not act for them.

The PA states that they are not liable for these costs as the Tenants could have asked for a vacuum. The PA states that even if they did replace one of the machines the Tenants provided no receipts for the costs claimed.

The Tenant states that the rodents got into the food and in particular into the bulk rice and coconut flakes purchased at a warehouse store requiring a membership. The Tenant states that these items had to be thrown out. The Tenant states that the Landlord was told in the summer of 2015 that the rodents were getting into their food and that the Landlord only told them to buy plastic containers. The Tenants claim \$14.00 and \$22.00 for the costs of these items. Photos provided, no receipts were provided. The PA states that the Tenants never told the Landlord of this loss or provided receipts for these items during the tenancy.

The Tenants state that each day during the tenancy they spent time dealing with the rodent infestation including the clean-up of rat feces, trap placements, cleaning of rat soiled clothing and articles and removal of dead rodents and nests. The Tenant claim a total of \$5,700.00, calculated at \$300.00 per month or \$10.00 per day. The Tenant states that they tried to obtain a pest control company but were told by the companies that the Landlord had to contract these services. The Tenants state that they raised the issue of the rodents repeatedly during the tenancy and point to the Landlord's evidence of communications between the Parties. The Tenant states that they spoke directly with the PA, in December 2014 about the rampant infestation and that they were told by her to buy traps. The Tenant states that when they again raised the issue directly with the

PA in the summer of 2015 about the rodents and the damage occurring to the walls they were told to buy traps and cover the holes. The PA states that the Tenants were initially asked to obtain quotes for a pest control company. The PA states that the Landlord was prepared to pay for such costs however when the Tenant did not provide this information the Landlord assumed that there was no pressing problem. The PA states that when the Landlord was informed of the presence of rodents in January 2016 they took immediate action and hired pest control. The PA states that they were triaging the complaints from the Tenants and if the Tenants had sent photos to show the extent of the problem the Landlord would have acted sooner. The PA states that they do not recall being informed of any squirrels.

### WATER

The Tenant states that the water for the unit is fed by a mountain creek and that due to a historically dry season the creek had run dry by July 2015. The Tenant states that their well still had some water but by August 2015 it was completely dry. The Tenant states that they notified the Landlord when the well was dry and continued to text the Landlord over the following two weeks but received no response. The Tenant states that they notified the PA who told them that they would have to wait as she was on vacation. The Tenant states that they went without water until August 17, 2017 after which they had to haul water and put it in the well until mid-September 2015. The Tenant states that the water then proceeded to turn brown. The Tenant states that their enjoyment of the unit was greatly devalued and that after the Landlord started to bring the water the Landlord started to tell the Tenant how to use the water such as not flushing toilets or washing clothes.

The Tenant claims \$700.00 for the costs of labour and fuel to bring 14,000 litres of the water to the unit. The Tenant states that the truck broke down on one occasion as he was hauling 2000 litres of water. The Tenant claims an additional \$360.00 for the cost of bottled water for drinking. The Tenant submits that when the well did have water previously they would drink that water. The Tenant claims \$45.00 for the costs of

disposable diapers from August 1 to 20, 2015. The Tenant states that they previously used cloth diapers however a good water source is needed for these diapers.

The PA states that it was clear from the onset of the tenancy that the Tenants are to inform them by using their office phone number and by email with a copy to the PA as the primary contact. The PA states that if the Tenants had followed the notification provision the Landlord could have responded sooner. The PA states that she saw only a single text message on August 17, 2015 and that water was then provided. The PA states that she was on vacation for two weeks until August 31, 2015 and that she followed up on her return to see how the water turned out. The PA states that the Tenant used the water inappropriately in the circumstances as when the Landlord arrived with a water delivery the Tenants had their outdoor (children's) pool filled with water. The PA states that the Landlord placed water both into the pool and into the well on that occasion. The PA states that the Tenants drained the well by filling the pool. The Landlord states the tenancy agreement establishes that the Tenants must provide receipts for any reimbursement being sought. The PA states that the Tenants were asked several times for receipts and that nothing was forthcoming other than their texts and emails.

The Tenant states that they were never given any emergency contact information or told that the PA was on vacation. The Tenant states that they believe they had the cell phone number of the Landlord but that the Landlord would no answer. The PA states that the office # was in the tenancy agreement and that her personal business card with her personal cell number was given to the Tenants. The Tenant states that the pool made the Landlord furious and that they were blamed for draining the creek. The Tenant states that initially they refused to fill the pool as they were aware the water was diminishing but that in order to measure the rate of loss and recovery they purposely put 5" of water in the pool. The Tenant states that when after 12 hours there was no recovery they had to phone for water. The Tenant states that the Landlord topped up the water in the pool after the well was filled. The Tenant states that the pool became

the only source for cleaning. The Tenants state that they have 4 children between the ages of 3 and 14 years.

### STOVE

The Tenant states that on Christmas Day 2015 as they were preparing to roast the turkey the oven would not light and then an explosion occurred blowing the door open. The Tenant states that they were not able to restart the oven and called the Landlord the next day. The Tenant states that the Landlord was angry that they called on Boxing Day and told them that nobody was available. The Tenant states that as a result of the Landlord's response the Tenant then repaired the stove himself. The Tenant states that he is a heavy duty mechanic that charges \$80.00 per hour for his trade. The Tenant states that it took him 2.5 hours for the repairs and claims \$101.00. The Tenant states that calling in a plumber on a holiday would cost \$150.00 per hour.

The PA agrees that the Landlord knew of the problem with the stove and did nothing. The PA states that the Tenant was asked to submit anything in writing and that the Tenant only texted her.

### PIPES

The Tenant states that the water pipes burst in the morning of January 6, 2016. The Tenant states that they turned off the water and called the Landlord who told them he would send someone. The Tenant states that nobody had come by 7:00 p.m. and as his wife was recovering from surgery the Tenant made the repairs himself in order to have running water. The Tenant states his actions saved the unit from further damage. The Tenant states that he informed the Landlord of the repairs and asked for \$100.00 in compensation however the Landlord denied them because they were not given permission to make the repairs. The PA states that the Tenant texted around noon that the leak had been located by the Tenant and that he could fix it for \$100.00 as it would be easier for him to make the repair than to clear the driveway.

### BOILER

The Tenant states that despite the Landlord's offer to send a repair person for the boiler that constantly had issues, the Landlord never did. The Tenant states that as the boiler was the main source for their heat the Tenant made the intermittent repairs until the spring of 2016 when the boiler completely failed. The Tenant states that he provided his expertise to the repair person hired by the Landlord, that the repair person called for his assistance and that the Tenant stay at home to give them the assistance. The Tenant states that he provided 15 hours of labour.

The PA states that they were informed of the outside boiler being a problem on January 6, 2016 and the Tenant were told that the PA would "look into it". The PA states that a repair company was called 15 minutes later. The PS states that the Tenant was informed that the repair company would call before coming out and that when the Tenant did not answer the repair companies call the company did not go out. The PA states that the next day they were informed that the company did not attend and the Tenant was informed that repairs may not now be able to be made for the next couple of days. The PA states that the Tenants had no problems with this timeline.

### HOT WATER TANK

The Tenant states that in January 2016 the hot water tank failed and a flood occurred. The Tenant states that the Landlord was informed and the tank was quickly replaced however the Tenant had to troubleshoot the new tank as it was tied to the outer heat system. The Tenant states that he spent about 4 hours working on the new tank and claims an undetermined amount. The Landlord states that they were never informed of any ongoing issues with the hot water until the end of the tenancy. The Tenant points to the Landlord's evidence package that contains a letter from the Tenant dated January 27, 2016 noting that the hot water tank was still not working right. The Tenant states that they were without hot water until sometime in February 2016 and that the Tenant had to help the repair person who did not know what the problem was.



### ENTRIES

The Tenant states that persons acting for the Landlord entered their unit without any formal notice or without knocking and being given permission to enter on several occasions. The Tenant states that at least one of these persons entered with a key.

The Tenant states that the persons were real estate agents or were there for inspections or repairs. One of the persons that entered without notice or knocking came to clean the carpets. The Tenant states that none of the persons were told to leave.

The Tenant states that they were given proper notice for one entry on January 27, 2016 however the person simply walked into the house without knocking. The Landlord states that entries occurred without notice where there were emergencies.

### FINAL COMMENTS

The Tenant states that overall they felt degraded by the state of the unit, that nobody would visit because of the rodents and the interior condition of the house, and that the state of the house caused marital problems. The Tenant states that rodents were seen running along the walls and left feces on their beds and furniture. The Tenant states that their sleep was affected. The Tenant states that they did start looking for another place to live in 2015 when they had no water and the rodents exploded but that they could not find a rental home in the area. The Tenant states that they showed great patience and that they continually made repairs themselves that are not being claimed such as the costs of the filters that they changed and the smoke alarms that they installed. The Tenant states that they paid for repair items that cost less than \$100.00 and did not claim them because the tenancy agreement stipulates that all reimbursements for repairs must be supported by costs over \$100.00 and that costs below this amount would not be reimbursed. The Tenant states that they put more work into the unit than the Landlord did.

The PA states that the Landlord was a generous person and had the Tenants communicated "more effectively" and if the Tenants had contacted the PA in particular, actions would have been much quicker. The PA states that the tenancy was frustrating for them as well and that the Landlord was not aware of how bad things were until after

the Tenants moved in. The Landlord states that while the Tenants informed them in September 2015 that they wanted to move out the Landlord also understood that the Tenants did not want to move because of the kids. The PA states that none of the expenses claimed by the Tenants were ever submitted to the Landlord despite being asked "time and again."

### Analysis

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for *landlord's use of property* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Given the undisputed evidence that the Landlord ended the tenancy for landlord's use I find that the Tenants have substantiated its claim for the compensation of **\$1,440.60**.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. 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. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

I accept the Tenants' persuasive and well supported evidence of a rodent infestation from the onset of the tenancy and evidence that the Landlord was immediately and repeatedly informed of the problem. I find that by informing the Landlord of the infestation the Tenants acted to mitigate their losses. I also accept the Tenants' evidence that they believed the Landlord would act as required and that the Tenants were very patient with the Landlord. Although the Landlord chooses to cast this

patience as evidence that the issues were not concerning I see this more as the Landlord exploiting the Tenants' patience. Nowhere does the Act require a Tenant to repeatedly ask for repairs before a Landlord has an obligation to act. Nor does the Act require a tenant to put requests for repairs into writing. Requiring written notification of emergency repairs for example would be unreasonably onerous and could lead to greater losses suffered by both parties. I also accept that the Landlords did nothing until nearly two years later. I find therefore that the Tenants have substantiated that the Landlord was negligent and failed to provide and maintain a unit free of a rodent infestation thereby endangering and affecting the Tenant's health and well-being. I accept the Tenant's credible and persuasive evidence of reasonable costs related to their labour in dealing with the infestation and find that the Tenants have substantiated their claims to costs for that labour in the amount of **\$5,700.00**. Given the lack of receipts or bills for the claims for food, supplies and machinery I find that the Tenants have not substantiated these costs and I dismiss these claims.

I accept that the Tenants lost significant enjoyment of the unit given the infestation however this loss of enjoyment would have been mitigated by the Tenant's own labour and own supplies to reduce the infestation and maintain a clean house. Although the Tenants gave evidence of the Landlord's failure to make repairs to other areas of the rental unit as the Tenants never delineated any specific amounts for these losses along with the loss of enjoyment due to the infestation I find that the Tenant has only substantiated a global amount of **\$3,025.00**. This amount reflects approximately 1/10 of the monthly rent paid over the duration of the tenancy.

While I accept that the Landlord may have required the Tenants to put requests in writing, this does not relieve the Landlord of the obligation to make repairs where the Landlord is made aware of a problem by any means. Given the undisputed evidence that the Landlord was made aware of the stove malfunction and took no action to address the problem at all, such as informing the Tenant that a repair person would be looked for, I find that the Landlord acted negligently and that the Tenant is therefore entitled to compensation for the loss of use of the stove. As the amount claimed by the

Tenant for its labour is a reasonable equivalent amount for compensation given the time period, I find that the Tenant is entitled to the **\$101.00** claimed.

Section 32 of the Act provides that "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

As there were no repairs required in relation to the provision of water I find that the matter of the loss of water is not an emergency repair. I therefore dismiss the claim for the costs of hauling water. However there is no dispute that rent included the provision of water and there is nothing in the tenancy agreement to indicate otherwise. I accept the Tenants' more persuasive evidence that the well ran dry due to the water source ending and not due to any act or negligence by either Party. I do consider the lack of water to be an urgent situation that requires a quick response. I accept that the Tenants had no emergency contact number to reach the Landlord and that the Landlord failed to answer the Tenants calls when they did call the Landlord directly. I find that the Tenant mitigated its losses by hauling in the water. As the Tenants did not provide any receipts for the costs of the water and diapers I find that the Tenants have only substantiated a nominal amount of **\$300.00** to reflect the loss of water due to a failure of the Landlord to act as quickly as it should have to replenish the water supply.

Section 33 of the Act provides that a tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

This section further provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Although the Landlord did not give the Tenant permission to make the repairs to the leak in the pipes had the Tenant not acted at all, such as turning off the water, I accept that the damages would have been far greater. I consider the leak to have been an immediate emergency situation. Given the accounting provided to the Landlord for this hearing I find that the Tenant is entitled to be compensated in the more than reasonable amount of **\$101.00** claimed for the repair of the leak.

Given the evidence that the Landlord sent a repair person to the unit within a short time I find that the Landlord acted reasonably to repair the boiler and given the evidence that the Landlord did not ask for the Tenant's assistance for those repairs I dismiss the claim in relation to boiler repairs.

Given the undisputed evidence that the Landlord was not informed of the Tenants being without hot water due to the water tank, considering the Tenant's evidence that the email in January only refers to the tank "not working properly" and considering that the Landlord did not ask the Tenant to assist the repair person I find that the Tenant has not substantiated that the Landlord failed to act in relation to the water tank. I dismiss the claim for the Tenant's time in relation to troubleshooting the water tank.

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.

While I accept the undisputed evidence that persons acting on behalf of the Landlord entered the unit either with a key or without knocking and while I accept that this breached the Tenants right to privacy, the Tenants identified no amount of costs or losses or claimed amount in relation to these breaches. As a result I find that the Tenants have only substantiated a nominal amount of **\$100.00** for these breaches.

As the Tenants' application has met with some success I find that the Tenants are entitled to recovery of their **\$100.00** filing fee for a total entitlement of **\$10,867.60**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$10,867.60**. 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 Act.

Dated: May 5, 2017

---

Residential Tenancy Branch