



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, MNDC, O

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was originally convened on March 13, 2017 via teleconference and adjourned as per my Interim Decision of the same date. Both hearings were attended by the landlord and one of the tenants. In the March 13, 2017 the tenant confirmed she was moving out of the rental unit and amended her Application to exclude the matter of cancelling the notice to end tenancy.

The above noted adjournment was granted, in part, because of time constraints of the first hearing. I ordered that the only additional submission that I would accept was the tenant's revised Monetary Order Worksheet.

I note the tenants submitted, on April 5, 2017, a Monetary Order Worksheet and the supporting utility bills. I also note that on April 12, 2017 the landlord, contrary to my orders in the Interim Decision of March 13, 2017, submitted his own Application for Dispute Resolution; Monetary Order Worksheet and 29 pages of additional evidence.

As I had ordered in my Interim Decision that the adjournment was not an opportunity for either party to submit additional evidence (other than the allowed tenant's Monetary Order Worksheet) and for either party to submit an Application for Dispute Resolution I have not considered the landlord's additional submissions. I note the landlord remains at liberty to file a claim against the tenant for any losses he believes he has suffered as a result of this tenancy in accordance with any restrictions outlined in the *Residential Tenancy Act (Act)*.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for the return of some rent; for the recovery of utility costs and for other costs, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

### Background and Evidence

The tenants submitted a copy of a tenancy agreement signed by the parties on June 1, 2013 for a month to month tenancy beginning on June 1, 2013 for a monthly rent of \$1,350.00 due on the 1<sup>st</sup> of each month with a security deposit of \$680.00 paid.

The tenants submit that from September 2014 to April 2015 the landlord undertook renovations to another part of the residential property to create a third rental unit. They state that during this period they had no access to their patio; that there was no back door emergency exit; frequent periods without water, electricity, and/or heat without warning. They also submitted that they did not have access to the laundry room during this period.

The tenants submitted that during this period the workers completing the renovations never complied with local bylaws regarding working hours, including working on Christmas morning at 7 a.m. The tenants did not provide any documentary evidence confirming what these bylaws included or any specific dates of any infractions.

The tenants seek compensation in the amount \$4,680.00 or \$585.00 per month for loss in the value of the tenancy for this period of time.

The tenants also seek compensation in the amount of \$6,360.96 for a period of "2015 to 2016" for loss in the value of the tenancy because after the landlord had an occupant living in the new rental unit he created during the above noted renovations they were disturbed by the new occupant; they went without electricity on many occasions; lack of water pressure; and the lower occupant's over use of hydro and gas that the tenants had to pay for during their tenancy.

The tenants seeks compensation for hydro and gas utility costs because the landlord required her to have these utilities in their name and while he compensated them \$50.00 per month for these costs for his use of the 2<sup>nd</sup> rental unit on the residential property he did not compensate them for the utility costs during the renovation of 2014/2015 or for the usage of the occupant of the new third rental unit on the property. The tenants seek compensation in the amount of \$952.83 for gas utility and \$855.84 for hydro costs for the duration of the tenancy.

Finally, the tenants seek compensation for their moving costs, in the amount of \$490.00. They seek the compensation because they feel that they had no choice but to move because of all of the issues identified above regarding the tenancy. The tenants wrote in their written submission that "I have every intention of moving hence I cannot afford to mentally endure another moment with Mr. C and his harassing, threatening and none peaceful feeling living here."

The landlord submitted that the renovations only took 6 months, not 8 and that none of the work was completed inside the tenants' rental unit. He submitted that the work included a new furnace; new electrical panel; new plumbing; and a new deck with stairs and railings.

The landlord submitted that the water pressure issue for showers resulted from the tenants changing the standard showerhead to a rain showerhead, which has more holes which disperse the water pressure and makes it feel like it has less pressure. He stated that all electrical problems had been rectified and the only identified issue by the electrical inspector was that the tenants were advised to not plug in multiple appliances at the same time and that they needed to remove their extension cord for the fridge that was plugged in outside.

The landlord submitted that the tenants never once raised an issue with the breakdown of utilities until she received the 2 Month Notice to End Tenancy. He stated that originally he agreed to pay the tenants \$50.00 for utilities for the unit that he used on a "part-time" basis. The landlord also submitted that after the occupant moved into the new lower unit the agreement changed to 50% for the tenants and 50% for the lower unit.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32(1) of the *Act* requires the 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 make it suitable for occupation by a tenant.

I am satisfied from the testimony of both parties that for a time during the tenancy the landlord undertook some significant renovations on the residential property. I am also satisfied that as a result of this work the tenants suffered a loss of quiet enjoyment to the rental unit.

However, as there is no evidence before me that the tenants ever attempted to have the landlord deal with any disturbances, such as documented complaints or any Applications for Dispute Resolution made to the Residential Tenancy Branch seeking orders to have the landlord comply with his obligations, I find the tenants failed to take any steps at all to mitigate this loss. As a result, I dismiss the portion of the tenants' claim for compensation in the amount of \$4,680.00 for the construction period.

In relation to the tenants' claim for compensation in the amount of \$6,360.96, with the exception of the water pressure and electrical issues, I find the tenants have failed to provide any evidence of disturbances from the downstairs occupants during the tenancy. I accept that the tenants had identified to the landlord the water pressure and electrical issues because the landlord provided responses to these issues that indicated he had been made aware of them.

However, I again find that the tenants did not take any reasonable steps to have the landlord comply with his obligations to ensure the tenants received quiet enjoyment of the rental unit such as written complaints or seeking an order from the Residential Tenancy Branch. Therefore, I find the tenants have failed to establish that they suffered any significant disturbances to their use of the rental unit during the period where this compensation is sought. I dismiss this portion of the tenants' claim.

Section 6(3) of the *Act* states a term of a tenancy agreement is not enforceable if

- (a) The term is inconsistent with this *Act* or the regulations,

- (b) The term is unconscionable, or
- (c) The term is not expressed in a manner that clearly communicates the rights and obligations under it.

Residential Policy Guideline 8 stipulates that a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party. Terms that are unconscionable are not enforceable.

Regardless of any agreement made between the parties in regard to what percentage of utilities each will be responsible for, I find that any tenancy agreement that requires the tenant to put utilities in their name in a multiple unit residential property is unconscionable.

I find that putting the tenant in a position where they must seek money from another occupant and the landlord every month for the duration of a tenancy is oppressive to the tenant. If the occupant from another rental unit refuses to pay the tenant a portion of a utility bill the tenant is not protected under the *Act* to obtain that money from the other occupant in the property. However, this does not invalidate any agreed upon percentages of responsibility.

Having said that, I find the parties have provided no evidence of what was agreed upon for percentages. As the burden rests with the tenants, in this case, to provide sufficient evidence to establish how much compensation they seek for this matter, I find the tenants have provided no explanation as to how she determined the amount claimed for during construction or for any other period.

As such, I dismiss the tenants' claims totaling \$1,808.67 for gas and hydro utilities. However, Residential Tenancy Policy Guideline 16 states the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

The Guideline goes on to say an arbitrator may award monetary compensation only as permitted by the *Act* or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward. In such cases "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find the tenant has established an infraction of a legal right in that the landlord required the tenants to put the utilities in their name when other occupants of the property used the same utilities. In the absence of the establishment of the value of their loss, I grant the tenants a nominal award of \$200.00.

In regard to the tenants' claim for moving costs I note that the tenants did not give a notice to end tenancy to the landlord but rather the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property. I also note that the tenants had originally applied to have the 2

Month Notice cancelled but later decided to not dispute the Notice and move out in pursuant to the landlord's Notice.

As the tenancy ended because of a landlord's Notice to End Tenancy and as I have found above the tenants have failed to provide sufficient evidence of a significant portion of their claims including any evidence of any type of harassment from the landlord, I find the tenants have failed to establish that the landlord has breached any portion of the *Act* that has caused the tenants to incur any losses for moving. I dismiss this portion of the tenants' claim.

#### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$200.00**. This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: May 12, 2017

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Residential Tenancy Branch