



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            O, CNR, MNDC, OLC

### Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- other relief- reinstating the monthly rent to the normal amount pursuant to the Order made in the previous hearing under the file number on the first page of this decision.

The tenant applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords were represented by their counsel and agent, JS (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the parties' respective applications for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of their respective applications and their respective evidence materials.

During the hearing the landlord cancelled their 10 Day Notice to End Tenancy dated July 2, 2017. As the Notice to End Tenancy was cancelled the tenant withdrew their application to dispute the Notice.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlords be ordered to comply with the *Act*, regulations or tenancy agreement?

Should the rent for this tenancy be reinstated to the normal amount?

Background and Evidence

This periodic tenancy began in February, 2016. Monthly rent in the amount of \$1,000.00 is due on the first day of each month. The rental unit is the lower floor of a detached single-family home. A separate tenant occupies the upper unit of the rental building. The entire rental building is heated by a forced air furnace which is controlled through a thermostat located in the upper unit.

There was an earlier hearing under the file number on the first page of this decision, where the tenant sought and order that the landlords make repairs to the rental unit as she found that the basement was not receiving sufficient heat.

The previous Arbitrator made the following orders:

1. **I ORDER** the landlord to ensure the heating vents are open and stay open to allow heat to the basement suite rental unit and to ensure the forced air furnace is turned on and functional for the remainder of the tenancy **no later than March 18, 2017 by 5:00 p.m.**
2. **I ORDER** that if the landlord fails to comply with my Order in #1 above, I authorize the tenant to pay **\$0.00 in rent as per #3 below.**
3. **I ORDER** that if the landlord fails to comply with my Order in #1 above, the rent will remain **\$0.00 per month** until such time that the landlord makes an application for dispute resolution to reinstate rent to the normal amount of \$1,000.00 with sufficient evidence that heating has been fully restored to the rental unit and an arbitrator is satisfied that heat has been restored to the basement suite rental unit and makes a finding on whether rent should be returned to the amount as listed on the tenancy agreement.

The landlord testified that on March 5, 2017 they retained a plumbing company to inspect and confirm that the furnace was operating properly. A copy of an invoice from the plumbing company dated March 6, 2017 was submitted into written evidence. The landlord said that in June, 2017 all of the heating vents in the upstairs unit were replaced with non-closable vents and an anti-tamper box was installed for the thermostat. The landlord submitted into written evidence photographs of the new vents and the anti-tamper protected thermostat. The landlord testified that these modifications will prevent the upstairs tenants or anyone other than the landlord from turning off the furnace or altering the temperature setting.

The landlord testified that they have sent numerous correspondences to the upstairs tenants prohibiting them from interfering with the heating system for the building. The landlord said that they are ending the upstairs tenancy and with the newly installed adjustments, any new occupants will not be able to interfere with the working of the heating system.

The tenant testified that she paid rent in the amount of \$1,000.00 for the months of April, 2017 and June, 2017 in error. The tenant said that pursuant to the terms of the earlier Order the rent should be \$0.00 as the necessary repairs were not completed by March 18, 2017 and the

landlord had not made a previous application to reinstate the full rent. The tenant further testified that because the heating system was not repaired until June, she utilized space heaters to warm the rental unit from March, 2017 to May, 2017, and is seeking to recover the \$125.00 paid for electrical bills during that time.

The tenant confirmed that heating has not been a pressing issue recently, which she attributed in part to the summer temperatures. The landlord testified that the thermostat for the building will be set at 22 degrees centigrade during the summer months and 25 degrees from September.

### Analysis

Based on the testimony of the parties I find that the heating in the rental unit has been restored. I find that the landlord has complied with the Order of March 14, 2017 by ensuring that the heating vents will stay open and the furnace is turned on and functional. I am satisfied, based on the written evidence submitted and the testimony of the parties that the heating to the rental unit has been restored. While I understand that the tenant has concerns about whether the measures taken will ensure the rental unit is sufficiently heated, I find that I am satisfied with the landlord's explanation of the modifications made. The landlord said that even if heat is distributed throughout the rental building, in an older building heat may dissipate through windows and walls. However, I find that the landlord has taken all reasonable steps in compliance with the order. Accordingly, I find that the monthly rent should be restored to the amount of \$1,000.00 as listed on the tenancy agreement. I Order that the monthly rent for this tenancy be restored to \$1,000.00 as of August 1, 2017.

I accept the landlord's evidence that the modifications to the vent system and thermostat were completed in June, 2017. Therefore, pursuant to Order #1 and #2 I find that the tenant was authorized to pay \$0.00 for monthly rent for the months of April, May, June and July, 2017. I accept the parties' evidence that the tenant paid rent in the amount of \$1,000.00 for April, 2017 and June, 2017 when she was not obligated to do so. I issue a monetary order in the tenant's favour, for the amount of \$2,000.00, the overpaid rent for this tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find there is insufficient evidence in support of the tenant's claim for the electricity bills she is seeking to recover. I find that the tenant has not provided receipts in support of the value of the claim nor has she submitted sufficient evidence to show that the full electricity bill was incurred

as a result of the landlord's violation of the Act, regulations or tenancy agreement. Accordingly, I dismiss this portion of the tenant's claim.

Conclusion

The landlords' 10 Day Notice was cancelled and of no further force or effect. The tenant's application to dispute the 10 Day Notice was withdrawn.

I Order that the monthly rent for this tenancy be reinstated to \$1,000.00 payable on the first of the month, in accordance with the tenancy agreement, commencing August 1, 2017.

I issue a monetary Order in the tenant's favour in the amount of \$2,000.00. As this tenancy is continuing, I allow the tenant to recover the \$2,000.00 monetary award by reducing the monthly rent by that amount on the next monthly rental payments to the landlords. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$2,000.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 27, 2017

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Residential Tenancy Branch