



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, MNDCT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord make emergency repairs for health or safety reasons; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

At the commencement of the hearing the landlord advised that the evidentiary material provided to the Residential Tenancy Branch by the landlord on the day before the hearing was not delivered to the tenant. Therefore, I decline to consider any of the landlord's evidence.

The tenant testified that the landlord was served with all of the tenant's evidence, which is disputed by the landlord. However, during the course of the hearing, the landlord agreed that he had been served with the evidence with the exception of a recording. The recording was not provided to the Residential Tenancy Branch within the time required under the Rules of Procedure. I find that the landlord has been provided with the balance of the tenant's evidence, all of which has been reviewed and is considered in this Decision with the exception of the recording.

### Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for the landlord's failure to provide and maintain the rental unit?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on May 1, 2017 and the tenant still resides in the rental unit. No written tenancy agreement exists, however rent in the amount of \$550.00 per month is payable at the end of each month for the following month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$100.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is 1 of 3 rooms in a lower level of a house which also contains 4 bedrooms in the upper level and a 1 bedroom suite. The landlord does not reside on the property.

The landlord attends the rental unit and collects the rent personally in cash, but doesn't carry a receipt book with him. When the landlord has no paper to write a receipt on, the tenant has provided a card for the landlord to sign. The tenant has not paid rent for March, April or May, 2018 and agrees that rental arrears are \$1,150.00.

The tenant further testified that the parties had been to a dispute resolution hearing on February 15, 2018, 2018 concerning the tenant's application for an order that the landlord make repairs, which were ordered. The tenant orally provided a file number for that hearing. The tenant testified that the landlord promised to make repairs, and was ordered to eradicate a rodent infestation by March 31, 2018, but did not. The rental unit still has mice and rats, which the tenant can hear in the walls, and keeps 5 traps in his room. The landlord hasn't done anything whatsoever to resolve it. The first week of the tenancy, the tenant told the landlord about the problem and all he did was bring traps from a dollar store.

The hot water tank and heat for the rental unit run by natural gas and radiators. On April 11, 2018 the gas company attended the rental unit, and the technician showed the landlord that the vent connector was non-compliant, among other problems. He sprayed a water solution on the hot water tank and hot water boiler and pipe, and said there is a gas leak, indicated by the bubbling, and he tagged the hot water tank. A by-law officer attended the next day and saw that the tags were missing in the furnace room and told the landlord he would be fined. After the by-law officer left, the landlord turned the gas back on and lit the pilot light. The Certificate of Inspection provided by the gas company states that the issues had to be resolved by April 25, 2018. The technician returned that day and shut off the gas from the outside so that no gas could get into the house. The tenant called the gas company who said that only their

technicians could turn it on and would not do so until the landlord made the repairs, but no one has returned to turn it on. The landlord has not made the repairs and put a For Sale sign on the property.

Last month the landlord turned off the power to the kitchen and the tenant's food went bad. The tenant used an extension cord, plugging it into the outside socket, but the landlord removed the socket. The tenant has not had electricity for about 6 weeks.

The tenant seeks an order that the landlord make emergency repairs to the electricity, the natural gas issues and eradicate the rodent problem. The tenant also seeks compensation in the amount of \$12,000.00 for the landlord's failure to maintain the rental unit and comply with the order of the Residential Tenancy Branch.

**The landlord** testified that the tenant owes 5 months rent, not 3 months. No rent was paid for November or December, 2017, leaving \$1,100.00 owed as well as \$150.00 for February, 2018. No rent has been paid for March, April or May.

The tenant also asked for the security deposit back, and the landlord gave it to him. The tenant kept repeating that he was moving out and the landlord believed him.

The landlord further testified that 2 contractors have told the landlord that the boiler was damaged at a cost to repair of \$3,850.00. The tenant deliberately broke into the furnace room many times, but does not know what the tenant did in there. A note on the door says that no one can enter without the landlord's permission, however it is also a common area with a washer and dryer; the furnace is around the corner.

The landlord also testified that the tenant's claim is pure blackmail.

### Analysis

Firstly, with respect to the landlord's testimony that the tenant's claim is pure blackmail, the *Residential Tenancy Act* requires a landlord to provide and maintain rental premises in a state of decoration and repair that complies with the housing standards required by law and that makes the rental unit suitable for occupation by a tenant. It also states that a landlord or a tenant may make an application for dispute resolution if the other party fails to comply with the *Act* or the tenancy agreement, and an Arbitrator with the Residential Tenancy Branch may determine the amount and order that party to pay compensation to the other party. That is not blackmail; that is the law.

The tenant has applied for monetary compensation from the landlord for the landlord's failure to maintain the rental unit and comply with the order made by the director,

Residential Tenancy Branch with respect to eradicating a rodent infestation. Where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed the February 15, 2018 Decision of the director which orders the landlord to eradicate the rodent problem by March 31, 2018. The tenant testified that the landlord has done absolutely nothing, and the landlord did not dispute that, however the *Act* does not permit me to make monetary orders to punish the landlord for any wrong doing, but only to determine the amount by which the tenancy has been devalued by the landlord's failure to provide and maintain the rental unit.

I also find that it is of great concern that the landlord would remove the tags from natural gas appliances and turn on gas and a pilot light while any leak may exist. The landlord did not dispute that testimony, or the testimony of the tenant that the landlord cut off the power and then removed the power plug that the tenant had plugged an extension cord into. I do not accept the testimony of the landlord that the tenant caused damages.

I hereby order the landlord to retain a professionally qualified electrician and a professionally qualified gas fitter and technician to repair the inside and outside electrical and the natural gas appliances in the rental property immediately. I also order the landlord to refrain from tampering with any tags or orders by the natural gas technician or electrician or by-law officer. If the landlord fails to have all of the repairs completed by June 15, 2018 the tenant will be at liberty to apply for further compensation.

Rent is \$550.00 per month and the undisputed testimony is that the tenant has had no electricity for 6 weeks and the natural gas was tagged on April 11, 2018. I also consider that the rodent problem has existed since the beginning of the tenancy. I find that the tenant's claim of \$12,000.00 is excessive considering the tenancy has only lasted a year. Given that the landlord was ordered to deal with the rodents by March 31, 2018 and failed to do so, I find that the tenancy has been devalued by half of the rent payable for the months of April and May, 2018, totalling \$1,150.00, as well as 20% of the rent payable for the months prior to the deadline given by the Arbitrator, totalling \$1,100.00. I also find that the tenancy has been devalued by an additional half for the landlord's brazen actions respecting electricity and natural gas for 1.5 months, totalling \$825.00.

The tenant is permitted to reduce rent for future months until the sum of \$3,075.00 has been realized or may otherwise recover that amount.

The parties agree that the tenant is in arrears of rent, but do not agree on the amount. However, I have no application from the landlord and make no findings other than the fact that the tenant is in arrears.

### Conclusion

For the reasons set out above, I hereby order the landlord to retain a professional electrician and a professional gas fitter and technician to repair the inside and outside electrical and the natural gas appliances in the rental property immediately. I also order the landlord to refrain from tampering with any tags or orders by the natural gas technician or electrician or by-law officer. If the landlord fails to have all of the repairs completed by June 15, 2018 the tenant will be at liberty to apply for further compensation.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,075.00, and I order that the tenant be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it.

This order is final and binding and may be enforced.

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 24, 2018

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Residential Tenancy Branch