



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, OLC, ERP, PSF, FFT

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting an emergency order for repairs, , an order that the Landlord comply with the Act, Regulations and/or tenancy agreement and an order to provide services or facilities as required under the legislation or the tenancy agreement. The Tenant also request an order for payment of the filing fee of \$100.00.

On July 26, 2018 the Tenant submitted an Amendment to an Application for Dispute Resolution seeking to add a monetary claim in the amount of \$1,620.00 and the Landlord confirmed receipt of the Tenant’s claims

The Tenant, Landlord and assistant manager of the building, KS, appeared for the scheduled hearing. A correction was noted to the spelling of the Landlord’s last name, and is reflected in this decision.

Neither party raised any issue on the service of the Notice of Hearing; the Tenant raised an issue that the Landlord’s evidence package was posted on her door and received by her 7 days prior to the scheduled hearing; she questions why it was not provided sooner. I note that her receipt of this evidence at least a week prior to the hearing is acceptable under the Residential Tenancy Branch’s published Rules of Procedure, rule 3.15. I find that there is no prejudice to the Tenant and allowed all evidence filed by both parties to be considered at the hearing.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present

affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issues to be Decided

Is the Tenant entitled to an Order for emergency repairs, pursuant to section 33 of the Residential Tenancy Act ("Act")?

Is the Tenant entitled to a monetary order for compensation, pursuant to section 67 of the Act?

Is the Tenant entitled to an Order requiring the Landlord to comply with the Act, Regulations and/or tenancy agreement, pursuant to section 62(3) of the Act?

Is the Tenant entitled to an Order to provide services or facilities as required under the legislation or agreement, pursuant to section 62(3) and 65 of the Act?

Is the Tenant entitled to payment of the \$100.00 filing fee, pursuant to section 72 of the Act?

### Background and Evidence

The tenancy began December 1, 2017 and a copy of the tenancy agreement and addendum were submitted into evidence. The tenancy is for a fixed term to end November 30, 2018 and monthly rent is \$1,500.00 plus \$30.00 for parking, payable on the first of each month. A security deposit of \$750.00 and a pet deposit of \$750.00 was paid by the Tenant to the Landlord.

The Tenant filed this Application on June 11, 2018. The Tenant has several issues and concerns she asked be addressed, which she summarized while making reference to several photographs and documents submitted into evidence. Each one will be summarized below, along with the Landlord's response:

## 1. Water Leak

The Tenant states that in May, there was a substantial leak in the pipes in the common hallway on her floor, in two places. The water was pouring out of the ceiling, which was opened up and left with buckets below to catch the water. She reports the carpet as being soaking wet, states that commercial grade fans were not used and that remediation was not done properly.

She is concerned that there may have been asbestos in the material removed and that there is mold or a bad smell remaining, although the water is not leaking anymore. She provided a photograph showing a standard home fan in the hallway and claims no de-humidifier was used.

The Landlord states that he took over management at the start of May and found that there were many issues and concerns that had not been attended to by the previous manager. He noted that there were complaints of no hot water and had a new water heater installed; this was done too quickly, resulting in several burst pipes which then required immediate attention.

He states that he used de-humidifiers and a fan which he had available and that the hole in the hallway ceiling was left open for a few days to complete the repair and air out the moisture before it was closed up. He states that this work was all completed over the course of about a week in May and is not an issue at this time.

## 2. Mice Infestation:

The Tenant states that she was reporting a mice issue and produced an email to her previous manager asking that something be done in mid-March, 2018. He replied that he would investigate, but never did. The Tenant's written statement indicates that everything must be washed before being handled, her children are unable to play on the floor due to mice droppings, and that she spends considerable time sweeping and bleaching her floors and counters, as mice are running around her home.

The assistant manager, KS, stated that she told the Tenant in November of 2017 when she viewed the apartment that there "may" be a mice issue. When the new manager took over in May, it became apparent that the previous manager had neglected to address her complaint and they hired in a pest control service to investigate and lay traps in June and July. There was some dispute over whether or not every room in the

suite was inspected, but in any event, the Tenant reports 3 mice being caught and that the pest control people killed another one; photographs were submitted into evidence. The Landlord states that they are on top of the issue and provided a report from the pest control company that they are continuing to monitor and situation and plan to return August 2, 2018 to inspect the apartment again.

3. Smoke Alarm:

The Tenant states this was not working and had requested a repair which never happened. The Landlord states it is unfortunate the previous manager did not address this issue but that a new working smoke alarm is in place now.

4. Smoking on the Premises:

The Tenant states that she smoked a cigarette on her balcony on June 9<sup>th</sup>, and within 20 minutes, received a notice that she was in breach of her tenancy agreement. She states that she is not in breach and that she has never received any warning that her smoking was bothering other residents and asks that it be retracted; she also states no other smoking tenants received such a letter.

The Tenant points to section 9 of the Addendum to her tenancy agreement, which states, *"no smoking is allowed in the building as per our No Smoking Policy. Smoking is permitted on the patio if there is a fire proof dispenser available AND the other tenants are not affected."* The Tenant would like the tenancy agreement honoured and smoking permitted on the patio without fear of being sent a letter stating she is in breach of her agreement.

The Landlord argues that this has been a non-smoking building for some time and that existing tenants were grandfathered in to that policy. KS stated that when she signed the tenancy agreement with the Tenant, she understood the Tenant not to be a smoker and therefore did not cross off the addendum item number as she assumed it would not apply to this tenant. She states that she now lives next door to the Tenant since the new manager took over in May, and that she and other residents are bothered by the Tenant's smoking on the patio and that a proper receptacle is not in use.

5. Heating:

The Tenant states that the heat won't work and that she tried to turn it on June 3, 2018. She admits that she did not call or write the Landlord about this issue, only having mentioned it in her dispute application. The Landlord provided no response to this.

6. Patio Door Lock:

The Tenant states that this pops open when the door is shaken and she states that nothing was done about this after she called the Landlord early May to repair it. The Landlord states that he was unaware of this problem until today.

The Tenant states that since the new manager took over and moved in next door, she has received multiple letters and notices which have created a situation where she believes she is being targeted. She has received notices for parking, her boyfriend visiting, smoking, concerns about her pet being off-leash and unattended, and using a barbecue (which she claims was only used once and is simply stored on the balcony). She views these recent complaints as being too frequent and in violation of her right to quiet use and enjoyment of the rental unit.

Quiet Enjoyment:

The Tenant filed an amendment to her claim and is requesting \$1,620.00 in damages, which is equivalent to part of the monthly rent over the months she has had to live in a rental unit infested with mice and needed repairs; this sum also includes the cost of mice traps, legal advice and registered mail charges. She claims in her evidence that she is being intimidated, is prevented from having guests without disruption and that the rental unit is falling into a state of disrepair.

The Landlord states that he is justified in enforcing the no smoking or barbecue provisions of the building policy and that head office requires him to send a letter of breach immediately. The Tenant's boyfriend was seen scaling a railing to enter the building and was confronted by the Landlord; since that time, there has not been any incident involving the boyfriend who now enters the premises through entry doors.

The Landlord stated that there appeared to be a large volume of building issues when he took over management and that tenants are asked to put repair requests in writing. He states that he needed to confirm parking spaces and sent the tenants a notice but

when the Tenant did not reply to confirm her stall number, he had to follow up. The Tenant states her son had torn up part of the notice and this was the reason she did not reply the first time.

The Landlord states that he is not targeting this Tenant with notices and letters, that they simply want to address the repair issues in the building and keep residents safe. He said he felt badly that the previous manager neglected to address certain concerns more quickly, but that they are working to rectify this.

### Analysis

Under section 33 of the Act, emergency repairs must meet the following criteria;

- 33** (1) *In this section, "**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.*

I have considered the specific items claimed by the Tenant and find that the following qualify as an emergency repair: leaking pipes, heating and damaged locks.

The leaking pipes were a result of a hot water heater repair and the matter was addressed by the Landlord in May. Water is not leaking now and there is insufficient evidence before me to suggest that the repair and remediation was lacking. Accordingly, I am not prepared to issue an order for an emergency repair for leaky pipes.

Section 33 goes on to require the Tenant to meet further requirements:

*(3) 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.*

I find that the Tenant has failed to notify the Landlord about the heating concern or patio door lock by telephone at least two times, as required under section 33. The Landlord is entitled to receive this notification if this is a true “emergency repair”. As this area is currently in a heat wave, I do not find that the problem with the heat is an “urgent” matter, in any event.

However, the Landlord now has notice and should investigate this issue prior to colder weather arriving. Although this is not an emergency repair under section 33, I am prepared to order the Landlord to investigate and make any necessary repairs to ensure the heat is in working order no later than September 15, 2018, as a regular “non-urgent” repair.

Similarly, the Landlord is required to investigate the patio door issue and to provide the Tenant with a working lock or alternative to ensure no one can access her suite through that entrance, within 10 days of the date of this decision. The Tenant is required to provide reasonable access to her rental unit for the Landlord to complete this work.

The other repair items raised by the Tenant are not considered “emergency repairs”, however, the Tenant has also made a claim that the Landlord comply with the Act and tenancy agreement, and therefore I will consider these additional claims within that context.

The mice infestation is now being addressed by the Landlord in a manner which is considered reasonable and timely. I make no additional order compelling the Landlord to take further action, as he has contracted with a pest control company to follow up and monitor the situation.

The smoke alarm has been replaced and it is unnecessary to make any order with respect to that device at this time.

Finally, the Tenant has claimed \$1,620.00 in monetary damages as a result of a breach of her right to quiet enjoyment of the rental unit. Section 28 of the Act states, in part:

*28. A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

The Tenant pointed out several instances where the Landlord has issued letters of breach, citing her smoking on the balcony, pet concerns, use of a barbecue, plus issues involving her assigned parking stall and her boyfriend being confronted when he climbed the balcony railing to her suite.

She states that these frequent complaints against her, coupled with the water leak and mice infestation, have impacted her use and enjoyment of the property. I find that the Tenant's complaint about the mice infestation was not addressed in a reasonable time frame, and that she and her children were forced to endure this problem for about three months before the new manager called in a pest control agency to begin work. I find that the Tenant's claim for \$1,620.00 to be excessive, given the circumstances. The new manager has worked diligently in addressing the complaints of tenants that had been building under the previous manager. Nevertheless, it was admitted that this Tenant was forced to wait on the issue of the mice infestation, which is unreasonable. I am awarding her the nominal sum of \$100.00 for each of these three months, for a total of \$300.00.

As for the letters and discussions around the other issues, I find that the Landlord was acting within his rights to address the concerns about the barbecue, pet, visitors and parking, and that their actions were justified. The Landlord is cautioned, however, that the Tenant signed an agreement which clearly allows smoking on the balcony, even if she was a non-smoker at the time of entering the tenancy.



She is allowed to smoke on her balcony so long as she uses a proper receptacle to prevent a fire hazard. The Tenant must prevent any interference with other resident's use and enjoyment of their property by ensuring that the smoke does not bother others, and this includes the manager who moved in next door. There was no direct evidence in the form of written statements or other residents complaining of the Tenant's smoking, other than KS, the assistant manager now residing in the adjacent apartment.

As the Tenant was partially successful in her claim, I am awarding her the \$100.00 filing fee. This fee and the monetary award of \$300.00 is credited against the Tenant's monthly rental amount.

### Conclusion

I order the Landlord investigate and repair the heating on or before September 15, 2018.

I order the Landlord investigate and repair the patio door lock within ten (10) days of the date of this decision.

The Tenant is awarded the total sum of \$400.00 for damages and the filing fee; the Landlord shall credit the Tenant \$400.00 against her monthly rent for the monetary award for damages and the filing fee.

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 31, 2018

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Residential Tenancy Branch