



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MND MNDC FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord's agent (hereinafter called 'the landlord') represented the landlord. She agreed the tenant served their Application for Dispute Resolution by registered mail. I find that the landlord is legally served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) Compensation of \$1533.40 for water shutoff for many days;
- b) Compensation of \$450 for lack of repair;
- c) \$2278.08 for aggravated harassment;
- d) \$50 for cost of additional fob;
- e) \$14.49. + \$23.43 + 25 for postal costs of mailing the application and taking an hour off work to attend the hearing;
- f) \$100 for recovery of the filing fee.

### **Issue(s) to be Decided:**

Has the tenant proved on a balance of probabilities that they have suffered damages and loss due to act or neglect of the landlord? If so, to how much compensation have they proved entitlement?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. They had each submitted a significant amount of documentary evidence. While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The landlord stated that the tenancy commenced in May 2016 with the female tenant and a different room-mate, then in July 2016, the present tenants entered into the lease. Monthly rent was \$2500 and a security deposit of \$1250 was paid. The parties agreed the security deposit issue was settled in a previous hearing in December 2018. However, in looking at the file number provided by them, I find it shows as "cancelled".

Presumably they settled the security issue between them and, in any case, this is not relevant to the matter today.

The tenant provided dates and time of water shutoff. There were 27 documented times up to April 2019. The tenant calculates their compensation based on 50% of daily rent for days for which they received notice and 80% for the days they received no notice.

The landlord explained the building was over 20 years old and it had problems with the piping. Initially they had plumbers come in and inspect and repair. The strata provided notice for those events. However, they had ongoing issues with pressure surges and leaking and they could not always provide notice when there were emergencies that required the water to be shut off to fix leaks and other problems. She explained it was a whole building problem. The tenant agreed the building had a problem but said at the end of the tenancy, they had no hot water for about two weeks in their unit and building management had told them it was a faucet problem.

The landlord disagreed. She said a faucet would not stop hot water from coming and management had told them that the tenant kept calling but when the plumber tried the hot water tap, the hot water came when the water was on for a short time. The tenant said the text in evidence shows the next door unit had the same problem and it was not a faucet problem. The email described is dated April 24, 2019 at 11:13 and was sent from the building management. They wanted access for the plumber and the tenant said they could come then. There is no mention of a faucet etc. and the tenant said in reply that they had talked to other people in the building and everyone they spoke with had the same issue.

The tenant submits the landlord neglected to make repairs to the windows and cold air blew through them. They provided a video showing the problem. The landlord said they hired a contractor but building management said they had made numerous efforts to get the contractor into the unit without success and the landlord would have to look after the matter themselves. There were several texts in evidence. On the 29<sup>th</sup> of August 2017, the landlord gave the tenant notice a contractor would come to see the window problem tomorrow. The tenant replied they would not be home after 11:45 a.m. The landlord supplied a telephone number and asked the tenant to make arrangements directly with the contractor. The tenant said he called that number and the contractor came and said he would contact the landlord but they heard nothing after that. In January 17, 2018, the tenant texted the landlord complaining again about the window problem. The landlord replied that they spoke to "them" again and no one will come and they will just have to buy weather strips. She said she would have to come out and

check. The tenant agreed and asked when she was coming. In the hearing, the landlord said she told them to get weather stripping or otherwise fix the windows and she would reimburse them. The tenant denies they were ever told that. The landlord asked me to consider the timeline and the fact that there were no mentions of the window problem again so she assumed they had taken care of it.

The tenant claims \$50 reimbursement for an extra fob they got for another room mate. They claimed it was a "deposit". The landlord said they got two fobs and it was up to them to buy another fob if they wanted it for another renter. An email in evidence states they paid \$50 to the caretaker and in another email, building management told them if they bought an extra fob for their suite, it belongs to the suite and they need to tell the landlord to reimburse them. The landlord said they never agreed to reimburse for an extra fob. They have two for tenants and they do not need more.

The tenant provided evidence claiming aggravated harassment. They claim \$416 refund of rent for the 5 days remaining on the lease after the attacks from the landlord. The parties described what happened. The tenants were trying to help the landlord to re-rent the unit and the female tenant put an advertisement in. She said the unit had a 3<sup>rd</sup> bedroom. This was mid April 2019. The landlord sent texts and/or emails demanding she remove the advertisement as the unit do not have a 3<sup>rd</sup> bedroom. The tenants claimed the emails were harassing. They vacated April 28, 2018; the female tenant said she spent two weeks without sleep and crying so the male tenant could not sleep either. The landlord denies this was harassment. She said 'harassment' is defined as ongoing, repeated behaviour. She said she sent one text message when she was upset and angry and none after that. She said the male tenant and the room mate who had moved out had told her the things about the female tenant which she repeated in her text. The male tenant said there was some conflict when he was going to break up with the female tenant but he never made remarks like the landlord's accusations. The tenant submitted medical receipts for medication they took after they vacated which they say was needed due to the female tenant's subsequent panic attacks, and the male tenant's pain from teeth grinding and migraines. The female tenant also took 3 days off work, April 27, 28 and 29 due to emotional distress and she claims \$416 reimbursement for that.

The tenants also claim \$1000 for aggravated damages for humiliation, emotional distress and relationship interference.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

#### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant who is the applicant to prove on the balance of probabilities that the landlord through act or neglect caused their losses or damages. I find insufficient evidence to support their application for compensation for water shut offs. I find the landlord's evidence credible that the strata management made appointments for repair people to correct the ongoing water problems and so complied with their obligation to repair and maintain the premises pursuant to section 32 of the Act. I find section 33 of the Act does not require the landlord to give the section 29 Notice of Entry when there are emergency repairs required, such as leaking pipes. I find the weight of the evidence is that Notice of the shut down was provided when it was for scheduled inspections and repairs but when it was not given, it was in accordance with section 33 for emergency repairs. I find insufficient evidence to support the tenant's allegation that they were without hot water at the end of the tenancy because of a defective faucet in their unit. I find there was a text message on April 24 from the building management saying they were going to investigate the hot water problem in the tenant's unit because the unit next door had the same problem. However, the tenant replied that they had talked to other people and "everyone has the same issue". In summary, I dismiss the claim of the tenant for compensation for water shut offs as I find insufficient evidence that these were due to act or neglect of the landlord or that the landlord was in violation of the Act.

In respect to compensation for the landlord's failure to make repairs to the windows, I find the weight of the evidence is that the landlord neglected to make these repairs and violated section 32 of the Act. Although a contractor may have come out once or may have refused to come back, I find it is the landlord's duty under section 32 to repair and maintain the premises. I find the weight of the evidence is that the landlord failed in this duty. The landlord in the hearing was relying on the fact that the tenant did not keep complaining in writing about the windows. I find the tenant made specific complaints in August 2017 and several times thereafter. I find the tenant entitled to a rent rebate of \$50 a month for 9 months or \$450.00.

Regarding the tenants' claim for aggravated harassment, I find insufficient evidence that the landlord's behaviour was ongoing or repeated and meets the definition of harassment as defined in the dictionary of Canadian Law and in the Residential Policy Guideline 6 as follows:

*"Engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".*

However, as Guideline 6 notes it may constitute the breach of quiet enjoyment of the tenant. I find the evidence of the landlord's text or email, although only sent once, to be a serious breach of the female tenant's quiet enjoyment. The landlord used words such as a "ridiculously pathetic person", "a complete moron", "a misery" and one with an "inability to sustain a normal relationship". I find the evidence credible that this had a serious effect on the tenant's peace of mind and her ability to sleep. I find her entitled to compensation for her time off work in the amount of \$416. However I find them not entitled to a refund of rent for the remaining 5 days of their lease and other monies claimed for medication for subsequent panic attacks. I find the arbitrator noted in another case with the female tenant which was heard on June 8, 2018 concerning her rental of another unit:

*"The tenant testified that when she went in to sign the contract on April 3, 2018, she found out that dogs were not permitted in the rental unit. The tenant operates a dog walking and dog care business and planned to do so out of the rental property. The tenant testified that she started to have a panic attack because she was afraid she would not be able to find another rental property to live in for May 1, 2018 and felt pressured to sign the agreement even though it didn't allow dogs"*

I find it just as likely that the tenants were stressed by the move and the fact that she had difficulty finding accommodation for her dog walking business and this may have

caused their medical issues and her panic attacks. In summary, I find insufficient evidence that their medical issues or need for medication were caused by the landlord's actions.

In respect to their claim for aggravated damages, I find Policy Guideline 16 notes the damages "must be sufficiently significant in depth or duration, or both, that they represent a significant influence on the wronged person's life. Aggravated damages are rarely awarded". I find in this case the evidence is that there was a brief interference with the peaceful enjoyment of the female tenant contrary to section 28 of the Act. I find the award of \$416 for 3 days off work sufficient compensation in the circumstances.

I find insufficient evidence that the fee of \$50 paid to the strata for the extra fob was a deposit which should be returned by the landlord. I dismiss this portion of their claim.

Regarding the claim for postal fees and time off work to attend the hearing, I find section 72 of the Act limits recoverable fees for the Application process to \$100 for the filing fee. I find the tenants entitled to recover the filing fee.

### **Conclusion:**

I find the tenants entitled to a monetary order as calculated below and to recover their filing fees for their application.

Lack of repair of windows	450.00
Compensation for emotional distress causing 3 days off work for female tenant	416.00
Filing fee	100.00
<b>Total Monetary Order to Tenant</b>	<b>966.00</b>

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: April 23, 2019

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Residential Tenancy Branch