



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDCT, RP, PSF, DRI

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 11, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act, tenancy agreement, or regulations;
- an order to provide services or facilities required by tenancy agreement or law;
- an order for regular repairs;
- to dispute a rent increase;
- a monetary order for damage or compensation; and

The Tenants and the Landlord attended the hearing on April 23, 2020 at 9:30 AM. The hearing did not complete within the scheduled time. As such, pursuant to Rules 7.8 and 7.9 the hearing was adjourned and was reconvened on May 25, 2020 at 1:30 PM. Both the Tenants and the Landlord attended the reconvened hearing as well.

The Tenants testified that they served the Landlord with their Application in person on February 24, 2020. The Tenants stated that they served the Landlord with their documentary and digital evidence by registered mail on March 23, 2020. The Tenants stated that they also sent the Landlord their evidence on April 10 and April 15, 2020 by email. The Landlord confirmed receipt of the Tenants' Application package, documentary, and digital evidence, however, the Landlord stated that she was reluctant to open the attachments in the email as well as access the evidence contained in a memory stick as the Landlord felt it may have been a scam.

I accept that the Landlord received the Tenants Application and documentary evidence and that it was the Landlord's decision not to view some of the evidence prior to the hearing. I find that the Landlord did not provide any evidence to demonstrate that the Tenant's evidence was not presented or served in accordance with the Act. As such,

pursuant to Sections 88 and 89 of the Act, I find the Tenants Application and evidence was sufficiently served in accordance with the Act.

The Landlord stated that she served a copy of her documentary evidence to the Tenants by xpresspost on April 13, 2020. The Landlord provided the xpresspost receipts in support. The Landlord stated that she also served a copy of her documentary evidence to the Tenants via email. The Tenants stated that they have not yet received the Landlord's documentary evidence.

In this case, I find that the Landlord has submitted sufficient evidence to demonstrate that she served the Tenants with a copy of her documentary evidence by xpresspost on April 13, 2020. As such, pursuant to Section 88 and 90 of the Act, I find that the Tenants are deemed to have been served with the Landlord's documentary evidence on April 18, 2020 the fifth day after the mailing.

### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. During the hearing, the Tenants clarified that the majority of their claims related to issues with the water quality at the rental property.

The Tenants have also applied to dispute a rent increase, which is not related to the water quality issue. As such, the Tenants were notified that their claim to dispute a rent increase is dismissed with leave to reapply.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order to provide services or facilities required by tenancy agreement or law, pursuant to Section 62 of the *Act*?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, tenancy agreement, or regulations, pursuant to Section 62 of the *Act*?
3. Are the Tenants entitled to an order for regular repairs, pursuant to Section 32 and 62 of the *Act*?
4. Are the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted into evidence which indicates that the tenancy started on August 1, 2018. The Tenants are currently required to pay rent in the amount of \$1,090.00 which is due to be paid to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$525.00.

The Tenants stated that they have been experiencing problems with the water at the rental property. The Tenants stated that in November 2018, they discovered that the water became discoloured which caused them some concern. The Tenants stated that they notified the Landlord about the issue, however, the Landlord notified the Tenants that they should boil the water prior to drinking it.

The Tenants stated that the problem resurfaced again the following year and that on December 27, 2019 they notified the Landlord that the water was once again discoloured and requested that the Landlord take action to ensure that the Tenants had clean potable water to use. The Tenants stated that they provided the Landlord with photos of the discoloured water in their bathtub.

The Tenants stated that the problem with the discoloured water persisted and that the Landlord did not take action to resolve the issue. The Tenants stated that they took it upon themselves to have the water tested on January 24, 2020. The Tenants provided a copy of the water tests results which indicated that there were some notable levels of E.coli and Coliform bacterial present in the water. The Tenants' water test suggested that the Tenants' boil the water prior to consumption.

The Tenants stated that to date, the Landlord has not taken any action to improve the quality of the water. The Tenants are seeking that the Landlord comply with the Act, and tenancy agreement by providing the Tenants with water that is suitable for consumption.

The Landlord responded by stating that she was not aware of any issues with the water at the rental property as previous tenants had not notified her of any issues. The Landlord stated that it is common for water to become discoloured in the region when there are heavy rains. The Landlord stated that the residents in the region are required to boil their water prior to consuming it during heavy rains as the water can become discolored and may not be potable at all times.

The Landlord stated that she made attempts to attend the region, however, given that the water issue occurred over the holidays, the Landlord was unable to attend the island until January 27, 2020 at which point the Landlord was able to take some water samples for testing. The Landlord provided two water test results dated January 28, 2020 and February 25, 2020.

The Landlord stated that her water tests were conducted by a qualified microbiologist which indicated that there was no E.coli present in the water samples. The Landlord did

state that there was some coliform bacteria found, which is treatable through boiling the water prior to consumption. The Landlord stated that she notified the Tenants of this requirement until such a time that the water quality improves.

The Tenants stated that they have not been boiling their water as it is time consuming and requires a great deal of effort. The Tenants stated that they have resorted to driving to a neighbouring property to get clean water. The Landlord stated that she never assured the Tenants that the water at the rental property would be potable at all times.

The Tenants are seeking monetary compensation in relation to expenses incurred as a result of the poor water quality at the rental property. The Tenants provided a detailed monetary worksheet totalling in the amount of \$2,534.83.

The Tenants are claiming for other accommodations between January 28 to 30, 2020 in the amount of \$224.25. The Tenants stated that the issue with the water was so scary for them that they were unable to stay on the rental property as a result.

The Tenants are claiming for the costs of meals from January 28 to 30, 2020 in the amount of \$196.98. The Tenants are claiming for the cost of doing their laundry in the amount of \$40.00, the cost of gas for travel in the amount of \$50.00, cost of the water testing in the amount of \$94.50, cost of submitted the Application in the amount of \$12.92. Furthermore, the Tenants are seeking the full return of their rent from December 23, 2019 relating to the discoloured water.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenants submitted an Application for an order that the Landlord provide services or facilities required by a tenancy agreement or law, an order that the Landlord comply with the Act, tenancy agreement or regulations, and an order for regular repairs relating to water quality issues at the rental unit. The Tenants stated that they notified the Landlord in November 2018 and again in December 2019 about the discolouration of the water at the rental unit. The Landlord stated that this is a common occurrence in the region when there are heavy rains and that it is recommended that residents in the region boil their water before consuming it.

In this case, I find that the Tenants have provided insufficient evidence to demonstrate that the Landlord has breached the Act, tenancy agreement, or regulations demonstrating that the Landlord is required to provide the Tenants with potable water. I find that the Tenants have not provided sufficient evidence from a Health Canada advising that the water at the rental unit is harmful to the Tenants' health. I accept that during certain times, the residents in the region are encouraged to boil their water prior

to consuming it. During the hearing, the Tenants indicated that this is too time consuming and requires a great deal of effort.

I find that the Landlord has provided the Tenants with water as agreed upon in the tenancy agreement, however, when the water is discoloured due to higher than normal rain volumes, the Tenants' are unwilling to boil the water as suggested. I find that the Tenants have provided insufficient evidence to demonstrate that the water system requires any repairs.

In light of the above, I dismiss the Tenants claim for the Landlord comply with the Act, to provided a service or facility and for regular repairs without leave to reapply.

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants are claiming monetary compensation for other accommodations between January 28 to 30, 2020 in the amount of \$224.25. The Tenants are claiming for the costs of meals in the amount of \$196.98. The Tenants are claiming for the cost of doing their laundry in the amount of \$40.00, the cost of gas for travel in the amount of \$50.00, cost of the water testing in the amount of \$94.50, cost of submitted the Application in

the amount of \$12.92. Furthermore, the Tenants are seeking the full return of their rent from December 23, 2019 to date.

In this case, I find that the Landlord has not breached the Act. Furthermore, I find that Tenants have provided insufficient evidence to demonstrate why they were unable to reside in the rental property and prepare their own means as a result of the water quality. I accept that both parties provided evidence during the hearing that the water at the rental unit is potable, should the Tenants boil the water first. I find that the Tenants could have mitigated their losses by boiling the water as recommended. The Tenants chose not to. As such, I dismiss the Tenants' monetary claims without leave to reapply.

### Conclusion

I dismiss the Tenant's application for an order to provide services or facilities required by tenancy agreement or law, an order that the Landlord comply with the Act, tenancy agreement or regulations, as well as an order for regular repairs without leave to reapply.

I dismiss the Tenant's Application for compensation relating to damage or loss without leave to reapply.

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 29, 2020

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Residential Tenancy Branch