



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Green Team Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNDC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on June 30, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order to be paid back for the cost of emergency repairs;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement; and,
- recovery of the filing fee.

The Landlord's Agents (referred to as the Landlord) and the Tenants both attended the hearing. The Landlord confirmed receipt of the Tenants' application and evidence. The Tenants confirmed receipt of the Landlord's documentary evidence. Neither party took issue with the service of these documents, and was ready to proceed to discuss the issues on the application. I find both parties sufficiently served each other for the purposes of this proceeding.

All parties were provided the 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 Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to compensation for emergency repairs made, or for money owed or damage or loss under the Act?

### Background and Evidence

The Tenants stated that they moved into the property on June 1, 2016, and signed a two year lease. The tenancy agreement provided into evidence shows that the Tenants were under a fixed term tenancy agreement until July 31, 2018. The parties agree that monthly rent was set at \$5,200.00 and was due on the first of the month.

The Tenants stated that during the course of the tenancy there were multiple water leaks, due to failing plumbing lines, and this impacted their tenancy and many of their belongings. The Tenants are seeking compensation for all of the disruptions due to the water leaks, and because they believe the Landlord evicted them in bad faith (did not fulfill the grounds they listed on the 2 Month Notice to End Tenancy (the Notice) they issued.

The Tenants provided the following timeline in their written submission:

#### **TIMELINE**

May 2016	Tenant signs 2-year lease	
June 1st, 2016	Tenant moves into home	
Ongoing	Landlord and tenant have several conversation of long-term tenancy	
Oct 2017	First leak of heat exchanger (incident 1)	was previously repaired and showed signs of wear.
Nov 2017	Property Manager switches company to Green Team	Sign new lease for remainder of lease (9 months)
Nov 2017	Tenant asks if lease will renew for additional 2 years	Landlord responds that they will renew
Nov 2017	Incident 2 of HE leak	Plumber advises a lot of work needed to replace plumbing.

Dec 2017	Incident 3 of HE leak Incident 4 of floor heating leak	Plumber discusses all older plumbing needs replacing, will continue to leak under pressure and heat.
Jan 2018	Incident 5, 6 of floor pipes leaking	Leaks overnight into ceiling and lighting, soaks furniture and rug.
Feb 2018	Incident 7 and 8 of floor pipes leaking	Plumber repairs only small section of leaking pipe when all pipe needs replacing.
Mar 2018	Incident 9 of floor pipes leaking	Plumber came to fix.
April 2018	Incident 10 and 11 of floor pipes leaking	Plumber came to fix. Eventually turned off water and then heating system.
April 2018	Landlord schedules meeting with owner and tenant.	Tenant believed meeting was to discuss repairs and ongoing tenancy. Owner was worried about extent of repairs.
April 2018 (after meeting)	Landlord gives notice end lease.	

The Tenants are seeking the monetary claim maximum amount of \$35,000.00, and is broken down into several components within their written summary, as follows:

#### **FINANCIAL DAMAGES/COMPENSATION**

1. \$2,500.00 - Damage to rug and couches/furniture
2. \$2,420.00 - Undue stress and discomfort for 10+ incidents of flooding over 8 months
3. \$2,000.00 - Time for tenant cleanup of flooding and coordination of remediation \$200/occurrence
4. \$12,480.00 - Loss of use and enjoyment 30% of rent of \$5200=\$1560 x 8 months
5. \$5,200.00 - Penalty for early lease termination equal to one month's rent
6. \$10,400.00 - Penalty for ending tenancy not in good faith equal to two month's rent

The Tenants did not speak individually to each of the items they listed, but rather spoke generally about the issues they had. During the hearing, they stated that the first incident with leaking pipes was in January 2017, and there was a small pinhole leak in the hot water supply line in the utility room. The Tenants stated that the Landlord and the plumber they hired was responsive and timely. However, each time the plumber came, he would only fix the leaks, rather than replace the failing plumbing lines. The Tenants stated that the replacement was never done, and instead, the leaks were fixed, as they occurred. The Tenants stated that the leaks were mainly relating to the in floor radiant heat pipes, which are essentially hot water lines running through the floor, circulating water. The Tenants stated that the leaks would only occur in the winter, as this is when the radiant floor heating was used. The Tenants stated that the leaks would usually only be in one area, and the plumber would come and fix the leak, and within a matter of weeks, it would leak again in a different spot.

The Tenants reiterated that the leak started in January 2017 and it spanned, periodically, over a couple of winters (totalling 8 months of the tenancy). The Tenants stated that each time a leak would occur, they would have to clean it up, and it would take a couple of hours each time. The Tenants stated they did this because it would have been expensive to pay someone to come in, professionally, to clean up. The Tenants stated that they had to clean up on 10 occasions and did this themselves.

The Landlord stated that they feel bad for the Tenants because of all the plumbing leaks and tried their best to address each leak, in a timely manner, at the time it happened. The Landlord stated that they brought a plumber in each time, but the pipes kept leaking in a different spot. The Landlords stated that the leaks were mostly confined to the utility room, so this claim is very excessive. The Landlord stated that they issued the Notice at the end of April, so that the owner could move back into the house. The Landlord stated that they have no idea what was done with the house in the end because they stopped being the agents as soon as the Tenants moved out.

The Tenants stated the house sold, but they did not provide any documentary evidence to support this. Neither party submitted a copy of the Notice, and neither party explicitly said which ground on the Notice was selected. The Tenant did not describe or summarize the Notice, or its contents any further, and only briefly referred to it.

The Tenants evidence consisted on a summary page, with the above noted dates, plus a couple of photos of the flooding/leaks.

### Analysis

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 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.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/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 everything possible to minimize the damage or losses that were incurred.

First, I turn to the Tenants' request to reimbursed for the cost of emergency repairs they paid for during the tenancy. I note that Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

I accept that there were major leaks in the pipes, which required urgent repair. I am satisfied that the repairs meet the above criteria. However, under this application, the Tenants have requested to be paid back for the cost of the emergency repairs. In the hearing, it appears the Tenants were referring to the several occasions they had to clean up the leaks themselves. There is no evidence the Tenants paid any money to have the leaks repaired, or to have the leaks cleaned up.

Further, Section 33(5) states that:

*A landlord must reimburse a tenant for **amounts paid** for emergency repairs if the tenant*

- (a)claims reimbursement for those amounts from the landlord, and*
- (b)gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.*

Section 33(6) states that:

*Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:*

- (a)the tenant made the repairs before one or more of the conditions in subsection (3) were met;*

Subsection 3 states that:

*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.*

In order to be eligible for compensation for reimbursement of “emergency repairs” the Tenants would have had to follow all of the above rules, prior to paying for the repairs, and then, after paying for required repairs, they may be eligible for the return of amounts they had to spend. However, in this case, there is no evidence the Tenants actually paid any money. As such, I do not find this part of the Act or the ground they selected is applicable. I dismiss the Tenants request to be paid back for the cost of emergency repairs.

Next, I turn to the Tenants’ list of items, as they laid out on their summary sheet. They are as follows:

1. \$2,500.00 - Damage to rug and couches/furniture

I accept that there were a series of unfortunate leaks and plumbing issues, some of which had an impact on several pieces of furniture. It appears the Landlord was aware of major issues with the pipes, and would only fix the issues as they arose, rather than address the underlying issue. However, in this case, the onus is on the Tenant to demonstrate that they meet the 4 part test for damage or compensation, as listed above. In this case, the Tenants only loosely referred to a damaged carpet and couch, but did not explain how they arrived at this amount. There is no evidence to show which exact items were damaged, how old they were, or what they would cost to replace. I find the Tenants have failed to sufficiently demonstrate and substantiate the value of their loss. I dismiss this item, in full.

2. \$2,420.00 - Undue stress and discomfort for 10+ incidents of flooding over 8 months
3. \$2,000.00 - Time for tenant cleanup of flooding and coordination of remediation \$200/occurrence
4. \$12,480.00 - Loss of use and enjoyment 30% of rent of \$5200=\$1560 x 8 months

During the hearing, the Tenants stated that they were impacted by the leaking pipes over a period of around 8 months, in total, (winter months only for a couple of years). I accept that these leaks would have caused inconvenience and added stress for the Tenants. However, the Tenants did not directly speak to the “undue stress and discomfort” or their “loss of use and enjoyment”. They did not indicate how the floods impacted their use of the space, how long the impacts occurred. They did not substantiate what the impacts were to them as a result of the floods, other than having to physically clean the water up on occasion. As stated above, the Tenants only spoke about the flooding in general terms, without sufficient explanation as to the stress/discomfort it caused, or the loss of enjoyment/use that occurred. Ultimately, I find the Tenants have failed to sufficiently elaborate on items #2 and #4. I dismiss these items in full.

With respect to item #3, I accept that the floods were not caused by Tenant misuse or neglect. It appears the Landlord did their best to fix the leaks as they occurred, without a wholesale replacement of all plumbing systems. Ultimately, the leaks re-occurred regularly but I find the Landlord took reasonable steps to correct the issues as they arose. It appears this was done in a timely manner as well. However, I note that tenants may be entitled to compensation even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

In this case, although the Tenants have failed to sufficiently demonstrate and substantiate the actual impacts of the flooding, I am satisfied that some disruptions occurred.

I note that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, it is undisputed that the pipes leaked at least 10 times, to varying degrees over a period of several months. I accept that this would have created unwanted cleanup work for the Tenants, and would have impacted them to some degree, despite the Landlord trying to fix the leaks as soon as they could. I find a nominal award is appropriate in this case. I award the Tenants a nominal award of \$1,000.00 which is approximately \$100.00 in compensation for each leak/flood that occurred over the tenancy. I accept that the Tenants had to do much of the immediate leak mitigation on their own, at the time it happened.

5. \$5,200.00 - Penalty for early lease termination equal to one month's rent
6. \$10,400.00 - Penalty for ending tenancy not in good faith equal to two month's rent

Next, I turn to the Tenant's request for compensation (for the items #5 and 6) based on the “Notice” they were issued. I note the burden of proof rests on the applicant to prove their claim. In this case, the Tenants stated that Landlord did not fulfill the terms set out in the Notice they received in April 2018. However, neither party provided a copy of this Notice. It was only loosely referred to in the hearing, without any direct mention of which exact ground was selected on the second page of the Notice and what else the form contained.

I turn to the following portions of the Act (as written at the time the Tenants' received their Notice) which outlines what the Tenants would be entitled to if the Landlord did not use the property for the stated purpose for at least 6 months. Section 49 also lays out requirements for Notices that are issue, prior to compensation being awarded:

***Tenant's compensation: section 49 notice***

***51 (2) In addition to the amount payable under subsection (1), if***



*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

***Landlord's notice: landlord's use of property***

**49** (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*

In this case, I note the Tenants did not provide a copy of the Notice they assert they were issued. They only loosely referred to the Notice in the hearing. As such, I find there is insufficient evidence to demonstrate that a valid Notice was issued, and that it complied with the form and content requirements under section 52 of the Act. In order for compensation under section 51 to be triggered, there must be sufficient evidence to show that a valid Notice was issued. Without further evidence from the applicants on this matter, I find they have failed to sufficiently demonstrate that they were issued a valid Notice, or that they are entitled to compensation based on this Notice they claim they received in April 2018.

With respect to item #5, I note the Tenants have not provided a copy of the "Notice" they received, and it is not sufficiently clear that there was a valid Notice, or that they were required to move based on this Notice, prior to the end of their lease. The Tenants could have filed an application to dispute any Notice they received, rather than move out. I dismiss this item, in full.

As the Tenants were partly successful with their application, I also grant the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act. In summary, I grant the Tenants a monetary order in the amount of \$1,100.00 for nominal damages, plus the filing fee cost.

Conclusion

I grant the Tenants a monetary order in the amount of \$1,100.00. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order 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 2, 2020

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Residential Tenancy Branch