



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: OPR MNR MNSD MNDC RP RR FF

## Introduction

This hearing dealt with one application by the tenants and two applications by the landlord. The tenant applied for a monetary order, an order for repairs, and a reduction in rent for services or facilities not provided. The landlord applied twice, on separately issued notices to end tenancy, for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

At the outset of the hearing, the tenant stated that he had received the landlord's application for dispute resolution regarding a ten day notice dated January 2, 2009, but the tenants were never served with notice of the landlord's other application regarding a ten day notice dated December 10, 2008. The landlord provided testimony that she personally served the tenant with the hearing package on February 14, 2009. I find that the landlord has not provided sufficient evidence of service of the hearing package related to the notice dated December 10, 2008, and I dismiss that application.

In regard to the landlord's application related to the ten day notice dated January 2, 2009, the evidence of the landlord was that the landlord personally served the tenants with the ten day notice on January 2, 2009 at between 4:00 and 5:00 pm, and the landlord personally served the tenants with the hearing package on January 13, 2009 at approximately 5:00 pm. A witness for the landlord, another tenant in another suite in the same rental house, stated that she accompanied the landlord on January 2, 2009 and January 13, 2009 when the landlord served the notice and the hearing package. The tenant's response was that he did not ever receive the ten day notice dated January 2, 2009, and they could not have received it on January 2, 2009 because at 4:10 pm on that date he and his wife were in the hospital as his wife was giving birth to twins. They did not have any guests staying at their residence during that time. The

tenant received the landlord's application on January 20, 2009, but the hearing package did not include a copy of the ten day notice. I find that I prefer the evidence of the tenant on this point as more credible. I therefore find that the tenant was never served with the ten day notice dated January 2, 2009, and I dismiss the portion of the landlord's application regarding an order of possession. The remaining portion of the landlord's application for me to consider is the landlord's application for unpaid rent for January and February 2009.

During the hearing the tenant stated that he never received two pages of evidence that the landlord submitted as response to the tenant's application. The landlord stated that she personally served that evidence on the tenant on February 4, 2008. I find that the landlord did not provide sufficient evidence of service of those two pages, and I therefore did not admit or consider them as evidence in this decision.

#### Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to monetary compensation or a reduction in rent for the landlord's failure to repair and provide services?

Should the landlord be ordered to carry out repairs?

#### Background and Evidence

The evidence of the tenants was as follows. The tenancy began in September 2008, with monthly rent in the amount of \$900. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$450. Since the outset of the tenancy, the rental unit was not completed or repaired. The heaters do not work properly, and do not have covers on them. The tenants had to buy a heater for the babies' bedroom. The electrical system is faulty and the breakers shut off several times a week, and when the tenants inform the landlord, the landlord refuses to switch the breaker back on. Some of the electrical outlets give off heat, one of which melted an extension cord. The kitchen sink leaks, and as a result mold is growing under the kitchen sink. The front

door is unfinished and does not close properly, and the light outside the front door is faulty. A window was been removed and replaced with plywood. On or about November 6, 2008 a skunk sprayed under the suite and the landlord refused to pay for a hotel room that cost more than \$40. The smell from the skunk took about two weeks to fade away. A witness for the tenants stated that she was aware that there were problems with the rental unit from the beginning of the tenancy, and she was present once when the breaker blew out. In support of their application, the tenants also provided photographs of damage and a receipt for the heater.

The tenants acknowledged that they did not pay rent for January or February 2009. The tenants planned to move out by March 1, 2009, but they sought a repair order so that other tenants will not be faced with the same problems they have had. The tenants have claimed monetary compensation as follows: \$450 per month for each month of the tenancy; moving costs equivalent to a security deposit and the first month's rent for moving to another location, totaling \$1350 to \$1500; \$67.19 for the heater; \$64 for the tenant's time off work to attend the hearing; and free rent for February 2009 as agreed to with the landlord.

The landlord's evidence was as follows. The landlord denied any damage or problems with the rental unit and stated that any damage shown in the tenants' photographs was staged by them to avoid paying rent. However, the landlord's witness, another tenant in the same house, gave testimony that while she was not aware of the previous tenants in the rental unit in question having any problems with their electrical power, she was aware that there had been recent problems. Whenever the breaker in the other tenants' suite blew out, then she would have no power in her bathroom because it was on the same breaker. The landlord's witness stated that she has very rarely had power in her bathroom for the last three months. The landlord denied agreeing to give the tenants the month of February for free. The landlord has claimed \$900 for unpaid rent for January 2009 and \$900 for unpaid rent for February 2009.

### Analysis

In regard to the tenants' application, I prefer the evidence of the tenants as more credible and supported by the evidence of the landlord's witness, another tenant in the

same house. I find that the tenants are entitled to compensation for loss of quiet enjoyment for 5 months, from September 2008 through February 2009, in the amount of \$300 per month, for a total of \$1500. I find that the tenants are also entitled to \$67.19 for the cost for the heater.

I am not permitted to make any awards for costs stemming from the dispute resolution process other than recovery of the \$50 filing fee, which I find the tenants are entitled to in their application, for a total of \$1617.19.

The tenants have stated their intention to move out, and I therefore decline to make repair orders or order a reduction in rent beyond February 2009. I find that the tenants are not entitled to the amounts claimed for moving, as I am satisfied that the tenants have been fully compensated for their loss of quiet enjoyment during the tenancy and have made the choice to move out.

In regard to the landlord's application, I find that the landlord has established a claim for \$1800 in unpaid rent. The landlord and tenants did not have a written agreement that the tenants could have February's rent for free, and in any case the tenants have not yet moved out. The landlord is also entitled to recovery of her \$50 filing fee, for a total of \$1850.

### Conclusion

After deducting the tenants' award of \$1617.19 from the landlord's total of \$1850, The balance due to the landlord is \$232.81. I order that the landlord retain \$232. 81 of the security deposit in full satisfaction of their claim.

Dated February 16, 2009.