



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, LRE, FF

### Introduction

This matter dealt with an application by the tenant for a Monetary Order for money owed or compensation for loss or damage under the Residential Tenancy Act (Act), regulations or tenancy agreement, for an Order for the landlord to comply with the Act, regulations or tenancy agreement, An Order for the landlord to make emergency repairs for health or safety reasons, an Order for the landlord to make repairs to the unit, site or property, an Order for the landlord to provide services or facilities required by law, and an Order to suspend or set conditions on the landlords right to enter the rental unit. The tenant also seeks to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the landlord on October 23, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for:
  1. The landlord to comply with the Act, regulations or tenancy agreement?
  2. The landlord to make emergency repairs for health or safety reasons?
  3. The landlord to make repairs to the unit, site or property?
  4. The landlord to provide services or facilities required by law?

5. To suspend or set conditions on the landlords right to enter the rental unit?

## Background and Evidence

Both parties agree that this month to month tenancy started on July 23, 2010. There was a verbal agreement in place. Rent was \$1,300.00 per month and was due on the first of each month.

The tenant testifies that on the day she moved into the rental house she found the landlord had not removed all her belongings and had not cleaned the house. The tenant states she cleaned the house with help from her family and had to pack the landlords belongings into boxes and remove them to the garage. The tenant states she agreed the landlord could leave her belongings there until after her daughter's wedding in August, 2009. She states the landlord told her what she wanted to keep, what could be discarded and what could be taken to goodwill. The tenant states the landlord left her to organise this.

The tenant states she prepared numerous bags to put out for the garbage spring pick up organised by the city, some stuff was set aside as the landlord wanted to sell it in a garage sale. The tenant states the landlord did not come at the end of August, 2009 to collect her belongings. The tenant states that at the end of June, 2010, she called the landlord and told her she had the use of a truck and would be willing to delivery her belongings to her. The tenant states the landlord refused this offer. The tenant states she was unable to use the garage because of the landlords belongings stored there so the tenant moved the remaining belongs to the large garden shed. The tenant states the landlord and her daughter also approached her and asked if they could store a camper on the property. The tenant states she was reluctant to do so but did not know that she could refuse so did agree it could be left there for a short time. She claims in July it was removed and then brought back again without her permission.

The tenant states on October 02, 2010 she sent a letter to the landlords' agent (the landlords' daughter) and asked for all the landlords belongings to be removed from the property within 10 days or she would start to charge the landlord storage costs. The tenant states she got no



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response to this letter so on October 16, 2010 she called the landlords' agent and left a message. The landlords' agent returned her call and it was agreed she would come to the house on October 19, 2010 to remove all the belongings. The tenant states she did come on this date but only removed some of the belongings including the camper. The tenant states it was agreed that the landlords' agent would return on October 23, 2010 to remove the remainder of the belongings; however, she did not arrive on that date and the landlords' belongings remain on the property. The tenant seeks compensation for storage of \$200.00 per month to the sum of \$2,800.00 for storing the landlords' property for the 14 months of her tenancy and because she has lost the use of her garage and shed which are included in her rent.

The tenant also seeks compensation of \$250.00 for her time and labour in removing the landlords' belongings and for trips to the thrift store for the landlord. The tenant also seeks to recover the sum of \$30.00 she had to pay to the city for them to remove 15 extra garbage bags of the landlords' garbage at \$2.00 a bag.

The tenant seeks compensation in the form of a rent reduction of \$50.00 per month starting from November 01, 2010 as she has not had the use of two fireplaces in the house. One has problems with its masonry and one has not been serviced since 1983. The tenant states both fireplaces are not fit to use until they have been checked or serviced. The tenant requested the landlord send someone to look at the fireplaces in her letter dated October 02, 2010.

The tenant also seeks to reduce her rent by \$100.00 per month from November 01, 2010 for the loss of the use of the downstairs shower stall. She claims this shower leaks extensively and has caused water damage. The tenant claims she told the landlords' agent about this on September 18, 2010 she followed up with an e-mail and photographs and the agent did not respond to this. Someone came out to look at it on October 19, 2010 but no remedial action to repair it has been organised by the landlord.

The tenant seeks to reduce her rent by \$10.00 per month starting November 01, 2010 as she estimates her heating costs will go up due to not being able to use the fireplaces and because two windows are broken in the house which the landlord said she would repair at the start of her

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tenancy and to date these are still not repaired. The tenant states there was some plastic on the window which fell off months ago.

The landlord testifies that her belongings are in the garage and shed and she regrets she has not removed them sooner but as the tenant never put it in writing to her she forgot about them. She claims that when the tenant called her daughter about them she went as soon as possible to remove them. The landlord states the tenant gave her permission for them to store the camper on the property and this was removed when she asked them to do so.

The landlord states the fire places were serviced in 1983 and she has not used them since that time. She claims that at that time there was no issue with the company who serviced them concerning the masonry or safety issues. The landlord states she will have them serviced now for the tenant. The landlord states she did send a contractor to look at the shower stall and this will also be repaired as soon as it can be arranged as her contractor is a busy man. The landlord states the living room window had plastic over it to help keep the heat in. She states only the outside pane of glass is broken. She states the problem with the sliding glass door is just a broken seal and although it looks terrible there would be minimal heat loss from it.

The tenant seeks an Order for the landlord to comply with the section 32 of the Act and to maintain the property to make it suitable for occupation by a tenant and to comply with the health, safety and housing standards required by law. The tenant also seeks the landlord to communicate with her in a business manner and to respond to her concerns in a timely manner.

The landlord does not dispute this and states it will not be a problem to do so.

The tenant seeks an Order for the landlord to make emergency repairs. The tenant states with winter coming she considers the furnace to be an emergency and seeks an Order for the landlord to have this serviced as it has not been serviced since 1983.

The landlord states she will ensure she gets a contractor out to service the furnace.

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The tenant testifies that she sent the landlord a letter on October 02, 2010 outlining the repairs required around the home. She states she does not expect the landlord to do all these repairs but has pointed them out to her so she is aware of what is required to maintain her property.

The tenant seeks an Order for the shower to be repaired, for the living room window to be repaired and the sliding door to be fixed as these have been ongoing since the start of her tenancy. She states she requires the gas stove to be repaired. She states it does not leak gas but other repairs are required to make it fully functional. The tenant requires the landlord to replace the lawn mower as the original one that was provided to her has broken down. The tenant also requires the landlord to repair the paint work on her car which was speckled with paint when the landlord contracted someone to paint the outside of her house. The tenant states she does not want to make a claim for this on her car insurance as she has a \$350.00 deductible. The tenant also seeks to have the fireplaces serviced, cleaned or maintained.

The landlord states when she had the outside of the house painted the man painting said the tenants' car was parked too close to the house.

The tenant seeks an order for the landlord to provide the facilities for which she is paying rent. The tenant states she rented the entire property which included the garage and shed but has not had full use of these facilities because of the landlords' belongings.

The landlord states that when she moved out the tenant did not indicate to her that she wanted her to move her belongings she had to move quickly to allow the tenant time to move in before her tenancy started.

The tenant states she agreed the landlord did not have to move her belongings until after her daughter's wedding in August, 2009. But since that time she has just left them at the rental property despite reminders to remove them.

The tenant seeks an Order to suspend or set conditions on the landlords' right to enter the property. The tenant states the landlord or her daughter have been on the property without notice to do so when they first removed the trailer and then brought it back again. She also

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noticed a missing Bar-B Que tank on the camper and assumes they came back to remove this. The tenant states at the start of her tenancy she was only given a back door key and has never had a front door key for the rental house. The landlord states the keys were left in the house in an envelope. The tenant states she has never come across an envelope with keys in it.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. It is my decision that the landlord did not remove her belongings from the rental property at the start of the tenancy. The landlord argues that she had to move out quickly to allow the time to move in a week early and therefore did not have time to clean or pack her remaining belongings. However, the landlord could have returned to the property and removed them after her daughter's wedding as agreed with the tenant. I also find that even to this date not all the landlords belongings have been removed and the landlords arguments have little merit that she forgot to do this as the pictures show a substantial amount of belongings left behind and I find it difficult to believe that this amount of belongings were simply forgotten. Consequently, I uphold the tenants claim for monetary compensation of \$200.00 per month for storage and lose of the use of the garage and shed to the total sum of **\$2,800.00** pursuant to s. 67 of the *Act*.

I also find the tenant has had to put in a number of hours and labour in boxing, bagging, sorting and taking the landlords belongings to thrift stores and find she is entitled to compensation for this to the sum of **\$250.00** pursuant to s. 67 of the *Act*. I further find the tenant is entitled to be compensated for the **\$30.00** she paid to have the landlords garbage removed pursuant to s. 67 of the *Act*. The tenants' application was for a monetary award for \$3,380.00 however during the hearing she sought to recover the total sum of \$3,080.00.

With regard to the tenants claim for a rent reduction as compensation for the loss of facilities included in her rent. A landlord must maintain a residential property in accordance with the Act to comply with health, safety and housing standards required by law. I find the tenant has provided sufficient evidence to support her claim that she has not been able to use the two fireplaces in the property as they have not been serviced or maintained since 1983. I also find

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the tenant is entitled to reduce her rent by a further \$100.00 for the loss of her shower stall. The landlord argues that she has had her contractor out to look at the shower stall however she has still not authorized this work to take place despite the fact her agent was notified in person on September 18, 2010 and again in writing on October 02, 2010. I further find the landlord has not repaired the broken glass in either the window or door and although any heat loss from these areas may be minimal, she does not dispute that she agreed to make these repairs at the start of the tenancy and now still remain to be done. Consequently I find the tenant may reduce her rent by \$10.00 per month. The tenant has asked that the rent reduction starts on November 01, 2010. As the tenant may not receive this decisions before this date I have included this rent reduction as a Monetary Order for November for **\$160.00** for November. The tenant may continue to pay a reduced rent of \$1,140.00 per month until such a time as all above mentioned repairs are completed.

With regard to the tenants application for an Order for the landlord to comply with the *Act*, there is no requirement under the *Act* for a landlord and tenant to act in a civil manner towards each other, however common courtesy would require a business approach to a tenancy. However, The Residential Tenancy Policy Guidelines #1 give guidance to a landlord regarding her responsibilities to inspect and service a furnace in accordance with the manufacturer's specifications or annually if there are no manufacturer's specifications, a landlord is also responsible for replacing filters, cleaning heating ducts and ceiling vents as necessary. A landlord is also responsible for cleaning and maintaining the fireplace chimney at appropriate intervals. Consequently, I find the tenant is entitled to an Order for the landlord to comply with the *Act*.

With regard to the tenants claim seeking an Order for the landlord to make emergency repairs; s. 33 of the *Act* considers a repair to a primary heating system as an emergency repair. While I accept that the furnace is still functioning I have still considered this as an emergency repair as the landlord agrees it has not been serviced since 1983. Consequently, I Order the landlord to have the furnace serviced within seven days of receiving this decision.

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With regard to the repairs requested by the tenant; I find at the start of the tenancy the landlord agreed to do certain things around the property two of these were to have the window repaired and the sliding door to be repaired. I find the landlord has had ample opportunity to make these repairs and has failed to do so. I also find the landlord was notified in writing about the repair required to the shower and has failed to make this repair in a timely manner. The tenant has also requested repairs or servicing of the gas stove. As this is part of the fixtures of the rental property it is the landlords' responsibility to have this repair done also. The landlord provided a lawn mower for the tenant and it was agreed that the tenant would maintain the lawn of the property. It is therefore the landlords' responsibility to either replace or repair the lawnmower when it breaks down and as such I find she has also failed to do this throughout the summer months. Consequently I find the tenant is entitled to an Order for the landlord to repair or replace the window and sliding door, to repair the shower, to service or repair the gas stove and to repair or replace the lawn mower within a reasonable time frame.

With regard to paint speckles on the tenants' car caused by the worker who painted the house; I find the landlords arguments hold little weight and her contractor should have asked the tenant to remove her car or covered the car, if she was not available to move it, before he commenced work on the painting. Therefore I find the landlord is also responsible to have the damage to the tenants' car rectified within one month of receiving this decision.

The tenant seeks an order to be allowed to use the entire property including the garage and shed. As the use of these areas has been limited or denied because of the amount of the landlords belongings being stored there I issue an Order for the landlord to remove her belongings within one week of receiving this decision and return the use of the shed and garage to the tenant.

With regard to the tenants claim for an order to suspend or set conditions on the landlords right to enter the rental property; I find from the evidence presented that the landlord has entered the property on at least two occasions without the agreement of the tenant or 24 hours written Notice. Section 29 of the *Act* states a landlord must not enter a rental unit unless she has the permission of the tenant or has provided 24 hours written notice that included the purpose for





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entering, the date and time of entry unless an emergency exists and the entry is necessary to protect life or property. This applies to all parts of the property for which the tenant pays rent. Consequently, I find the landlords entry on the property does not comply with section 29 of the *Act* and find the landlord must comply with section 29 of the *Act* before entering the rental property in the future. I am not prepared at this time to suspend or set conditions other than those under section 29 of the *Act*. I further Order the landlord to provide the tenant with a full set of keys to the rental property within seven days of receiving this decision.

As the tenant has been successful with her claim I find she is also entitled to recover her **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*.

A Monetary Order has been issued for the sum of **\$3,290.00**.

## Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,290.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I ORDER the tenant to reduce her rent by \$160.00 making her rent **\$1,140.00** from December 01, 2010 and to continue at this amount until such a time as the fire places are inspected, cleaned, and any required repairs are carried out; the shower is repaired; the glass window is repaired or replaced, the siding door is repaired or replaced.

I ORDER the landlord to comply with section 32 of the *Act* with regards to the maintenance of the rental property. I further ORDER the landlord to comply with section 29 of the *Act* with regard to entry to the rental property and to ensure the tenant is provided with keys to the property within SEVEN DAYS of receiving this decision.

I ORDER the landlord to have the furnace serviced with SEVEN DAYS of receiving this decision.



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I ORDER the landlord to make repairs to the glass in the window and the sliding door; the shower, the gas stove; and the lawnmower within a reasonable time frame.

I ORDER the landlord to make any necessary repairs to the paintwork on the tenants' car at her own expense within ONE MONTH of receiving this decision.

I ORDER the landlord to remove all her belongings that are not included in the verbal tenancy agreement between the Parties within SEVEN DAYS of receiving this decision.

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: October 29, 2010.

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Dispute Resolution Officer