



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes** MT, CNR, MNDC

### **Introduction**

This matter dealt with an application by the tenants to be allowed more time to cancel The Notice to End Tenancy, to cancel a Notice to End Tenancy for Unpaid Rent and for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (Act), regulations or tenancy agreement.

Service of the hearing documents was done in accordance with section 89 of the Act, and were hand delivered to the landlord on either November 22, 2010 as declared by the tenants or November 25, 2010 as declared by the landlord.

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 make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### **Preliminary Issues**

The landlord states that a direct request proceeding took place on November 29, 2010 and he was awarded an Order of Possession against the tenants. The tenants moved from the rental unit on December 05, 2010.

The tenants state that they asked for a review of that decision because they had filed an application to dispute the Notice, they sought an extension of time to file for a review and the review application was based on the grounds that the party has new or relevant evidence that was not available at the time of the original hearing and evidence that the directors' decision was obtained by fraud. The review application was dismissed and the previous Decision and Orders made on November 29, 2010 were upheld. The decision for review also states that the application for review disclosed no basis on which even if the submissions were accepted that the decision or Orders would be set aside or varied.



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As the tenants filed their application to cancel the Notice after the date of the Notice became effective pursuant to section 66 (3) of the Act the director must not extend the time limit to make an application for dispute resolution to dispute the notice to end tenancy beyond the effective date of the Notice. Consequently, as the tenants have moved from the rental unit I dismiss their application for more time to cancel the Notice and their application to cancel the 10 Day Notice to end tenancy.

## **Issues(s) to be Decided**

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

## **Background and Evidence**

Both Parties agree that this tenancy started on July 03, 2009. Rent for this unit was \$475.00 per month.

The tenants testify that their premises were illegally entered while both tenants were out of town and they have had property and cash stolen from their unit. The tenant's testify that they had rings stolen to value of \$1,337.93, cash stolen of \$1,216.50 and an assortment of DVD's stolen to a value of \$1,450.00. The tenants have provided two receipts from a jeweller for two rings, one purchased on April 27, 2005 and one purchased on August 16, 2006.

The tenants claim they had experienced people entering their unit on other occasions before this break in and claim that they informed the manager of the building of this and he changed their dead bolt lock and replaced the locks on the doors to the building.

The tenants have asked a witness to attend the hearing. This witness testifies that on November 27 she went to the tenants unit around 8.00pm to pick them up and noticed the dining room lights were not on but the television was on. She states she saw the manager of the building standing in the tenant's dining room through the window. The witness states she called her house and found that the tenants were already at her house. The female tenant came to pick her up and she told her what she had seen. She states the next day they asked her to write a statement and to go to the Police. She states the Police asked her to write a statement and they



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would investigate this. The tenant states the Police would not file a report as there was no evidence of forced entry.

The manager states the Police did call him on December 02. He states he was out of town staying at a friend's house on the day in question and it could not have been him in the tenants unit.

The manager states he changed the locks to the building and the tenants unit due to the tenants concerns about someone entering their unit. He states he changed their deadbolt to set the tenants mind at rest and the building locks were changed as they had not been changed for some time. He states he had no way of knowing if the tenants were being truthful or not about finding people in their unit but changed the locks to be safe. He states only staff hold keys to the building and tenants units and these are kept on their person. TELUS and Hydro also have keys to the building.

The manager argues that there is no evidence of a break in at the tenants unit and he cannot be held responsible for the tenant's belongings as he did his duty in ensuring the building was secure. He also states the tenants are responsible to have their own contents insurance coverage. He states it is the tenant's responsibility to ensure they lock their unit correctly. The manager questions the tenants credibility concerning the money they allege was stolen as they claimed they did not have money to pay their rent.

The tenants also testify that they had abnormally large hydro bills and state this is due to the landlord's failure to repair a hot water heater. The tenants claim one element has burnt out in the heater and this has caused their Hydro bills to be more costly.

The manager testifies that the Hydro bill included an extra \$420.00 for past unpaid bills and the amount of \$166.82 is a normal bill for that time of year for the 61 days the bill relates to. The manager has provided a copy of this bill in evidence. The manager has included a letter from certified electrician who states the burnt out element in the water heater would not produce any electricity and so would not be responsible for a higher Hydro bill.

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The tenant argues that this electrician is a business associate of the managers' father and as such his statement is not credible. The tenants claim they only have one baseboard heater and normal electrical household appliances. They continue to maintain the fault lies with the hot water heater.

## **Analysis**

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. With regard to the tenants claim for compensation or their alleged stolen property and money. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In this instance I find the tenant has not met any of the components of the above test for compensation for their alleged stolen property and money. The tenants have provided no proof other than two jewelry receipts to show that the loss exists; no proof to show this alleged loss happened because of the actions or neglect of the landlord or his manager; no evidence to show the actual amount required to compensate them for the alleged loss and the tenants have not proven what steps they took to mitigate there loss if these items were stolen. The tenant



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held no insurance and could not proof that any precautions were made to safeguard their personal belongings. Consequently I find this section of their claim is dismissed.

With regards to the tenants claim and the testimony of their witness I find there is insufficient evidence to show that this was the manager standing in the tenants unit. The police did not take any action against the manager and there is a general lack of evidence to support the tenants claim in this matter.

With regard to the tenants claim that due to the landlords neglect for repairs to the water heater that they experienced high Hydro bills. The manager has provided one Hydro bill that he argues is a normal amount of consumption for that time of year. The tenants argue that this is higher than they would expect. However, the tenants have provided no other Hydro bills for the same period of time in a previous year to show what their average bills would be. Consequently, the tenants have failed to meet the burden of proof in this matter and this section of their claim is also dismissed.

## **Conclusion**

The tenant's application is dismissed in its entirety 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: December 10, 2010.

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Dispute Resolution Officer