



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OLC RP RR FF

### Introduction

This hearing dealt with an application by the tenant for monetary compensation, as well as for an order that the landlord comply with the Act, an order for repairs, and a reduction in rent. Both tenants, the landlord and a witness for the landlord participated in the teleconference hearing.

The hearing originally convened on April 13, 2011. At that time, the tenants sought to amend their application. The landlord had not yet received the tenants' evidence regarding their amendment. I therefore adjourned the hearing to allow the tenants time to serve the landlord with the evidence regarding their requested amendment.

The hearing reconvened on May 12, 2011. At that time, the tenants stated that they intended to move out of the rental unit by May 31, 2011, and on that basis I did not hear evidence regarding their request for a reduction in rent. The hearing was not completed on that date, and I adjourned the hearing with instructions to the tenants that I would accept no further amendments between that date and the next reconvened hearing date. On June 11, 2011 the tenants submitted a written request for a further amendment to their application. I did not allow their requested amendment.

The hearing reconvened again on July 27, 2011, and was completed on that date.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?  
Should the landlord be ordered to comply with the Act?  
Should the landlord be ordered to carry out repairs?

## Background and Evidence

The tenancy began on December 1, 2009, with monthly rent in the amount of \$1400. The rental unit comprises the top two floors of a house. The landlord lives in the basement of the house. The tenancy agreement indicates that laundry is to be shared between the tenant and the landlord, and electricity, heat and dishwasher are not included in the rent. The tenants have the hydro and gas put in their name for the entire house, and the landlord reimburses the tenants for 50 percent of the hydro and gas bills. In October 2010 the landlord and the female tenant signed an addendum to the tenancy agreement, in which the tenants' use of the laundry is restricted to three days per week.

The evidence of the tenants was as follows.

### 1) Dishwasher

Prior to signing the tenancy agreement, the tenants and the landlord had a verbal agreement that the landlord would be providing a dishwasher from his other house. At the time that the tenancy agreement was signed, the dishwasher was not included because the landlord was having the dishwasher repaired. The dishwasher functioned until the beginning of February 2010. The tenants reported the problem to the landlord, but the landlord did not have anyone come and look at the dishwasher until April 2010. At that time the repairman diagnosed the problem as needing a new motor. The landlord told the tenants that he was not going to repair the dishwasher. The tenants have claimed reimbursement of \$50 per month from February 2010 to present, for the inconvenience of the non-functioning dishwasher.

### 2) Laundry Access

The tenants acknowledged that they signed the addendum to the tenancy agreement, which limited their access to the laundry facilities. The tenants felt they had no choice but to agree, because they did not want to be forced to move in the middle of their son's school year. The tenants wish to be compensated \$57 per month for each of the months from October 2010 to April 2011 for restricted access to the laundry facilities.

### 3) Hydro and gas for the cottage

In April 2010, the landlord rented a cottage suite located at the back of the property. The tenants asked the landlord whether the hydro and gas for the cottage were billed separately from the house, and the landlord assured the tenants that it was. The

tenants continued to pay 50 percent of the hydro and gas bills. The cottage tenants moved out at the end of January 2011. In March 2011 the cottage tenants informed the tenants that the landlord had asked them to lie on his behalf, that they did not have separate bills for hydro and gas for the cottage, and their utilities were included in their rent. Another tenant moved into the cottage in March 2011. The tenants have claimed reimbursement of 20 percent of the hydro and gas costs for the months of April 2010 through January 2011 and March 2011, in the amount of \$552.16.

#### 4) Outstanding Hydro bills

In November 2010 the male tenant and the landlord discussed the possibility of reducing the amounts of hydro and gas that the landlord would be responsible for from 50 percent down to 30 percent, based on the total number of persons occupying the house. The male tenant told the landlord he would have to speak to the female tenant first. The female tenant wanted an agreement in writing, but no such agreement was signed. In February 2011 the landlord refused to pay the outstanding portion of the hydro bill, based on the landlord's belief that he had reached an agreement with the tenants reducing the landlord's portion of the hydro to 30 percent. The tenants have claimed \$638.68 in outstanding hydro, based on the 50-50 split of the utilities as set out in the tenancy agreement.

#### 5) One month's compensation pursuant to notice to end tenancy

On March 31, 2011 the landlord gave the tenants a letter that was to serve as a two-month notice to end the tenancy as of May 31, 2011. In the letter, the landlord stated that he intended to use the rental unit as of June 1, 2011 for "other reasons." On May 12, 2011 the tenant gave testimony that she accepted this letter as a two-month notice to end tenancy for landlord's use, that she intended to act on the notice and move out of the rental unit by May 31, 2011, and that she was therefore claiming compensation equivalent to one month's rent pursuant to the two-month notice. When the hearing reconvened on July 27, 2011, the landlord testified that the tenants had not vacated the rental unit. The tenants stated that they were concerned that if they vacated the rental unit without a full month's notice, they may be liable for the following month's rent, so they decided not to move out.

The landlord's response to the tenants' application was as follows.

1) Dishwasher

There was no agreement that the landlord would provide a dishwasher. The dishwasher was in the rental unit but was not hooked up for use. The tenants hooked up the dishwasher themselves and chose to use it. The landlord refused to pay for repair of the dishwasher or any other compensation for the lack of a dishwasher.

2) Laundry Access

The tenants were using the laundry excessively, so the landlord made an agreement with the tenants to limit their access to the laundry. The tenants signed the addendum to the tenancy agreement, which limited their access to the laundry facilities to three days a week. The tenants should not be compensated for restricted access to the laundry.

3) Hydro and gas for the cottage

The landlord acknowledged that hydro and gas for the cottage were not separately billed. The landlord would have been paying for the cottage's gas and hydro through paying 50 percent of the gas and hydro.

4) Outstanding Hydro bills

The landlord acknowledged that the tenants were being billed for 100 percent of the gas and hydro, and up until January 2011 the landlord was paying the tenants 50 percent of the bills. However, the tenants were doctoring up the bills, and wouldn't let the landlord see the original bills. In November 2010, the male tenant agreed with the landlord that the landlord would pay 30 percent of the bills rather than 50 percent.

5) One month's compensation pursuant to notice to end tenancy

In the May 12, 2011 hearing, the landlord stated that he intended to occupy the house himself, which was why he served the tenants with the letter. The tenants did not move out on May 31, 2011, and therefore they are not entitled to monetary compensation. The landlord's position was that as the tenants stated they intended to treat the letter as a two-month notice, the landlord ought to be able to receive an order of possession pursuant to the letter.

## Analysis

In considering all of the evidence, I found as follows.

### 1) Dishwasher

I find the evidence of the tenants to be more credible than that of the landlord regarding the dishwasher. The dishwasher was in the rental unit at the beginning of the tenancy, whether or not it was hooked up. The landlord sent a service person to look at the dishwasher. There was no specific reference in the tenancy agreement to the exclusion of the dishwasher. I therefore find that a working dishwasher is included in the rent, and the tenants are entitled to compensation for having been deprived of such. However, the tenants did not provide specific evidence to demonstrate that their tenancy was devalued by \$50 per month for the loss of use of the dishwasher, and I find the amount of \$50 per month to be excessive. I therefore grant the tenants' claim of \$25 per month for loss of use of a dishwasher, for the months of February 2010 through May 2011, for a total of \$375.

### 2) Laundry Access

The tenants signed the addendum to the tenancy agreement, which limited their access to the laundry facilities to three days a week. There was little to no evidence that the addendum was not valid, or that the tenants signed it under duress. I therefore find that the tenants are not entitled to compensation for reduced access to laundry.

### 3) Hydro and gas for the cottage

I find it unconscionable that the landlord received rent from the cottage tenants but required the applicant tenants to pay for the hydro and gas for the cottage. I find the tenants' claim for reimbursement of 20 percent of the overall hydro and gas costs during the tenancy of the cottage to be reasonable, and I therefore grant the tenants the amount claimed of \$552.16.

### 4) Outstanding Hydro bills

Both the landlord and the tenants acknowledged that the hydro and gas were originally split 50-50. I am not satisfied that there was any agreement that the landlord's portion of the payments would be reduced to 30 percent, particularly as the landlord testified that he made an agreement with the male tenant in November 2010 but he continued to pay 50 percent until January 2011. I therefore find that the landlord is responsible for 50

percent of the hydro. I accept the evidence of the tenants that fifty percent of the outstanding hydro up to April 2011 is \$638.68. For all utilities amounts owed by the landlord after after this date, the tenants must present the landlord with the original bills, not altered copies of the bills, and the landlord must reimburse the tenants 50 percent of the cost of the hydro and gas bills.

5) One month's compensation pursuant to notice to end tenancy

The tenants did not receive a notice to end tenancy on the valid form, and in any case the tenants chose not to act on the letter given by the landlord, and move out of the rental unit. The tenants are therefore not entitled to the compensation claimed here. The landlord would not have been entitled to an order of possession pursuant to his letter.

The tenants are entitled to \$1565.84. As their application was partly successful, I find they are also entitled to partial recovery of their filing fee, in the amount of \$25.

Conclusion

The tenants are entitled to a total of \$1590.84.

The remainder of the tenants' claim is dismissed.

I grant the tenants an order under section 67 for the balance due of \$1590.84. This order may be filed in the Small Claims Court and 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: August 9, 2011.

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Residential Tenancy Branch