

# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### **Dispute Codes:**

OLC, MNDC, RR

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by the Tenant and the Landlord prior to the Hearing. All parties gave affirmed evidence and this Hearing proceeded on its merits.

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

This is the Tenants’ application for damages under Section 67 of the Act, for an order that the Landlord comply with the Act, and to be allowed to reduce rent for services not provided.

1. Is there a tenancy agreement in place?
2. Is the Tenant entitled to a monetary order for damages arising from the Landlord’s failure to provide snow clearance at the rental unit during the period of December 14, 2008 to January 2, 2009?

### **Background and Evidence**

The rental unit is a one bedroom suite in the basement of a residential home. The Landlord used to live in the upstairs suite, but the suite is now vacant. The Landlord is elderly, and her daughters attended the Hearing on her behalf.

The Tenant has lived in the rental unit for approximately 4 years. There is no written tenancy agreement. The monthly rent is \$625.00, payable on the first day of the month. The Tenant is not in arrears of rent.

### Tenant's testimony

The Tenant testified that there was heavy snowfall in his area, for a period of three weeks from December 14, 2008, to January 2, 2009, and he was effectively snowed-in because the Landlord failed to attend to snow removal around the rental property. The snow was piled up past his knee-level on the walkways and he was not able to get to his vehicle. The Tenant testified that the Landlord's daughter telephoned him after the first heavy snow fall to see if the pipes had burst at the rental property.

The Tenant testified that there are two common walkways which the Tenant accesses. The Tenant's door is located at the back of the house. There is a walkway from the Tenant's door to the parking area, where the Tenant's truck is parked, at the back of the house. There is another walkway around the side of the house, leading to the front of the house and the street. The Tenant testified that both of these walkways were impassable due to the amount of snow which accumulated over the three week period.

The Tenant testified that he has a number of serious medical conditions, including a condition that requires he take daily medication in order to live. The Tenant testified that he ran out of his medication and a friend came by to take him to the pharmacy to refill his prescription. The Tenant stated he was able to get to the friend's vehicle, with his friend's help, but that he had to stop three times on the way to his friend's vehicle for a rest. The Tenant stated he waited ½ an hour in his friend's car to catch his breath before he was able to enter the pharmacy to fill his prescription.

The Tenant testified that the rental property has been sold and that he will be moving out at the end of May, 2009.

### Tenant's Witness's testimony

The Witness testified that she was not aware of the Tenant's name until the end of March, 2009. She stated that she lives two houses away from the Tenant and saw the Tenant occasionally in passing, and exchanged nods and "hellos", but didn't have any further words until January of 2009, when she discovered they were neighbours.

The Witness testified that for approximately a five week period after December 12, 2008, she could not get her car out of her garage because of the amount of snow piled up in the alley. The Witness stated that there were approximately 12 snow falls, which would settle, then melt a little, and then a new snow fall would settle on top of the old. The Witness stated that she estimated that there was a total of 3 to 40 feet of snow that stayed on the ground (unmelted) from a total of about 58 inches that fell over that period of time. The Witness stated that the garbage collectors were unable to access the garbage bins in the alley behind the Tenant's residence, due to the amount of snow.

The Witness stated that she did not see any evidence of shoveling or de-icing around the Tenant's residence between December 12, 2008 and January 17, 2009. The Witness testified that on January 14, 2009, there were still areas where snow was piled up to knee-level.

### Landlord's agent's testimony

The Landlord's agents testified that they called the Tenant to see if everything was alright because they were worried about the pipes freezing. The Landlord's agents stated that the Tenant did not say anything about problems he was having with snow during the telephone conversation.

The Landlord's agents testified that they picked up the Landlord's mail at the rental property on December 28, 2008. They testified that there was snow on the ground, but that they were able to negotiate their way to the front door. The Landlord's agents testified that the mail had been delivered, so the mail man was able to get to the rental property.

The Landlord's agents stated that the City had not plowed the alley, so the Tenant could not get out to his vehicle in any event. The Landlord's agents stated that there was a bus stop in front of the rental property and that the street had been plowed, so the Tenant could have used the bus services to get out.

The Landlord's agents stated that they do not know anyone in the area of the Tenant's rental unit, who could have cleared the sidewalk. The Landlord's agents stated that there was a snow shovel on the property, leaning against a shed. The Landlord's agents testified that they had the walkways cleared, and de-icer was applied, on January 2, 2009.

### **Analysis**

A landlord is required to remove snow from the ingress and egress of a tenant's rental unit. The Tenant is entitled to compensation for his loss of use of the sidewalks.

There was no dispute between the parties that there was snowfall in the City over a period of weeks. The Landlord's agents agreed that they did not clear the walkways around the Tenant's residence until January 2, 2009. The testimony and evidence of both parties is that the snow began to fall on or about December 12, 2008.

If the Landlord had cleared the Tenant's walkways, he, like all others in the City, would still have found it difficult to get around. The entire city was covered in a blanket of snow. For example, the garbage collectors could not collect the garbage. I have considered the Tenant's claim for compensation in the amount of 3 week's rent and find it excessive.

In determining the amount of compensation due to the Tenant, I considered the percentage of area of the common walkways in relation to the area of the Tenant's rental unit. I find that the common walkways comprise approximately 15% of the total square footage of the combined suite and walkways. Therefore, I find that the Tenant is entitled to compensation in the amount of 15% of his weekly rent for three weeks, totalling \$73.13.

The Tenant will be moving out of the rental unit next month, and will be receiving the equivalent of one month's rent in compensation from the Landlord under Section 51 of the Act. Therefore, I dismiss the Tenant's application to for a reduction in rent, and provide the Tenant with a monetary order in the amount of \$73.13 against the Landlord.

### **Conclusion**

I grant the Tenant a monetary order under section 67 of the Act for \$73.13. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

April 16, 2009

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