



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, OLC, O, FF

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

As the tenancy ended after the Tenant filed her claim in this matter, the Tenant sought to amend her claim at the hearing to include the return of her security deposit. However, the Landlord objected on the grounds that she also wished to apply to keep the security deposit. Consequently, the Tenant will have to reapply for that relief.

### Issues(s) to be Decided

1. Is the Tenant entitled to compensation for damages and if so, how much?

### Background and Evidence

This fixed term tenancy started on August 1, 2008 and was to expire on July 31, 2009 however it ended on April 10, 2009 when the Tenant moved out. Rent was \$700.00 per month which included utilities. The Tenant paid a security deposit of \$350.00 and a pet damage deposit of \$50.00 on July 18, 2008.

The Tenant claimed that in mid-October 2008, the Landlord advised her that the rental unit was in contravention of the municipal by-laws and that the Landlord needed to remove the sink and stove. The Tenant said she was without a sink and stove for ½ of October, all of November and December 2008 and ½ of January 2009. The Tenant said the Landlord replaced the sink and stove in January 2009 but the stove was not hooked up to the exhaust so she could not use it for the remainder of the tenancy without setting off the smoke alarm.

The Tenant said the Landlord agreed to reimburse her \$300.00 for the loss of her kitchen facilities for 3 months. The Tenant argued however, that as she was only getting the use of a room, her rent should only have been \$400.00 per month. Consequently, the Tenant sought a further rent reduction of \$50.00 for ½ of October 2008, \$200.00 for November and December 2008. The Tenant also sought a rent reduction of \$300.00 per month for January, February and March 2009 because she still

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could not use the stove and oven. The Tenant said she contacted the Landlord a number of times in January 2009 about the problems with the stove but got no response until late February 2009 when the Landlord said she would have her father try to fix it. The Tenant claimed that by mid-March 2009 nothing had been done about the stove.

The Tenant also claimed that in mid-February 2009, her cable (which is included in the rent) was cut off and not reconnected. The Tenant said that she discovered that the cable had been paid for by another Tenant (who moved out) and she only had access to it because the Landlord had used a splitter.

The Tenant said that the suite was one of three suites in the rental property that shared one breaker panel which was located in another suite. The Tenant said that when she tried to plug in more than one appliance, the breakers would often trip leaving her without power and heat for hours at times. The Tenant claimed that the Landlord's father told her that the problem was that all the outlets were connected to one breaker box and he told the Tenant to plug an extension cord into the stove to try to alleviate the problem. The Tenant said that as a result of the frequent power outages, food in her freezer spoiled.

The Tenant also said that at the beginning of the tenancy, the Landlord promised to install closets but never did. The Tenant also claimed that the Landlord failed to remove ice from the entrance to the rental property during the winter months.

The Landlord admitted that the rental property did not comply with the municipal by-laws during the tenancy but argued that once she evicted another tenant, the property was compliant. The Landlord said the sink and stove were removed from the rental unit to do renovations which included replacing kitchen cabinets, a counter, a stove and painting. The Landlord claimed that the stove hood never worked and she was advised by an electrician that it could not be safely connected. The Landlord said that during the period of renovations, the Tenant was offered the use of the kitchen facilities in the upper suite where the Landlord temporarily resided. In any event, the Landlord argued that the Tenant agreed to a rent reduction of \$100.00 per month for 3 months to compensate her for the loss of her kitchen facilities.

The Landlord also argued that there was nothing wrong with the wiring in the rental property. The Landlord claimed that the problem was that the Tenant was plugging in too many appliances at one time.

The Tenant said the Landlord provided her with a small wooden cabinet to store things in when the sink and counter were removed. The Tenant admitted that 2 walls were painted in the kitchen but argued that the same stove, counter top and sink were replaced after 3 months.

## Analysis

Section 27 of the Act says that a Landlord must not terminate or restrict a service or facility if it is essential to the Tenant's use of the rental unit as living accommodation unless the Landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy.

I find on a balance of probabilities that the reason the Landlord removed the stove and sink from the kitchen in mid-October 2008 was because the rental property was not compliant with the municipal by-laws. I make this finding having regard to the fact that the stove and sink were put back into the rental unit roughly at the same time that the other tenants of the rental property (who were evicted) moved out and the suite was decommissioned. I also find it unreasonable that renovations of such a small scope would take 3 months to complete. However, I also find that the Tenant agreed to accept compensation of \$100.00 per month for the loss of the kitchen facilities for mid-October 2008 to mid-January 2009 and is therefore not entitled to further compensation for that period of time.

I find that the Tenant was deprived of the use of her stove and oven for the period, mid-January 2008 to the end of the tenancy. The Tenant claimed that she could not cook without setting off the fire alarm and the Landlord failed to rectify the problem after numerous requests to do so. I do not accept the Tenant's argument that the loss of the stove rendered the value of her rental unit to that of simply the use of a room. The rental unit also contained a living room and bathroom for the Tenant's exclusive use and she would still have had the use of the kitchen as well. Consequently, I find that the Tenant is entitled to recover \$75.00 per month for February and March 2009 and \$37.50 for ½ of January 2009 for a total of **\$187.50**. I decline to award any compensation for April 2009 as the Tenant admitted she did not pay rent for that month.

I find that the Tenant is also entitled to a further \$50.00 per month for the loss of use of a closet that was promised at the beginning of the tenancy. I note from the move in condition inspection report provided by the Landlord that the Landlord said she would provide a closet in the master bedroom. The Tenant claimed that by the end of the tenancy, this had still not been done. I find that one month would have been a reasonable period of time to provide the closet space and as a result I award the Tenant compensation for a 7 month period for the loss of this amenity or **\$350.00**.

The tenancy agreement states that cable is included in the rent. I find that the Tenant is entitled to recover compensation for the loss of cable for mid-February and March 2009. As the Tenant did not pay rent for April 2009, I find that she is not entitled to recover compensation for that partial month. The Landlord provided a copy of a cable statement for November 2008 which shows that after the first 6 month promotional



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period, cable was \$32.98 plus taxes (or \$36.94) per month. Consequently, I find that the Tenant is entitled to compensation of **\$49.47** (for 1 ½ months) for a loss of cable.

I accept the Tenant's evidence that the problem with breakers tripping in the rental unit was the result of 3 suites drawing power from the same breaker. However, in the absence of any corroborating evidence, I find that there is insufficient evidence to support the Tenant's claim for damages related to spoiled food. Consequently, this part of the Tenant's application is dismissed. For similar reasons, I find that there is insufficient evidence to support the Tenant's claim that the Landlord failed to maintain the access to the rental unit in a safe condition over the winter months and that part of her claim is also dismissed. As the Tenant has been successful in this matter, I find that she is entitled to recover **\$20.00** for the cost of photographs as well as the **\$50.00** filing fee for this proceeding.

In summary, the Tenant has made out a monetary claim as follows;

Loss of use of stove:	\$187.50
Loss of use of closet:	\$350.00
Loss of cable:	\$49.47
Photograph expense:	\$20.00
Filing fee:	<u>\$50.00</u>
TOTAL:	\$656.97

## Conclusion

A monetary order in the amount of **\$656.97** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 29, 2009.

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Dispute Resolution Officer