



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

### **DECISION**

#### **Dispute Codes:**

MNDC, MNSD, MNR, MND, FF

#### **Introduction**

This hearing was convened in response to an application filed by the tenant and an application filed by the landlord. Both parties were represented in the hearing and each was given an opportunity to participate in the hearing and each provided submissions and affirmed testimony to this process.

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*.

The tenant seeks a monetary order for:

- money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (\$1897.41)
- return of all or part of the security deposit (\$1200)
- to recover the filing fee from the landlord for this application in amount of \$50

The landlord seeks a monetary order for:

- money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (\$100 in late fees)
- keep all or part of the security deposit in partial satisfaction of the monetary claims
- unpaid utilities (\$781.25)

- damage to the rental unit (\$1125)
- to recover the filing fee from the landlord for this application in amount of \$50

It is noteworthy that the parties engaged in a dispute resolution process and hearing before a Dispute Resolution Officer on March 24, 2009. A decision and order was consequently rendered dated March 25, 2009. Therefore, at the outset of this hearing the parties were expressly advised that I would only, and can only consider, new, relevant, and eligible claims, which are not the subject of, or adjudicated in a previous application, decision, or order by a Dispute Resolution Officer.

Since the last hearing, the tenants vacated the rental unit on March 30, 2009.

The tenant's new and relevant claims on application are:

- \$97.46 - miscellaneous kitchen utensils - total
- \$200 - purported value of two (2) pairs of skates – total
- \$800 - “bird's nest” – “edible nest of cliff swallows” – herbal supplement
- \$1200 - security deposit held by landlord.
- \$350 - for tenant's claim they paid an acquaintance for 2 day's accommodation.
- \$150 - loss of quiet enjoyment due to claim landlord locked tenants out of suite one day earlier than Order of Possession.
- \$300 – loss of quiet enjoyment due to claim landlord cut off water supply to the suite for 5 days, and as to a plugged sink.

The landlord's new and relevant claims on application are:

- \$107.37 – Tenant's share of BC Hydro bill December 06 2008 – February 05, 2009
- \$102.42 - Tenant's share of BC Hydro bill February 06, 2009 – March 31, 2009
- \$100 - late fee for February rent, \$25 per day for 4 days. Term of tenancy agreement

- \$144.46 - Tenant's share of Terasen Gas bill Jan. 06 – Feb 05, 2009
- \$201.23 - Tenant's share of Terasen Gas bill Feb. 06 – Mar.05, 2009
- \$225.77 - Tenant's share of Terasen Gas bill Mar. 06 – Mar. 31, 2009
- \$875 - Estimate for work required to repair ceiling and walls in basement due to water damage alleged to be caused by tenant.
- \$250 - compensation to downstairs tenant for damaged box spring due to water damage alleged to have been caused by tenant

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

Has the tenant / landlord established, on a balance of probabilities, that they have suffered a loss due to the landlord's / tenant's neglect or failure to comply with the Act? And, if so established, did the tenant / landlord take reasonable steps to mitigate the loss?

The burden of proving loss and damage rests on the respective claimant, and, there is an obligation upon the claimant to act reasonably to mitigate or minimize the loss.

Is the tenant / landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

Both parties were denied entry into evidence of some of their submissions.

The landlord was denied entry into evidence 2 pages (photos) received at Residential Tenancy Branch on June 03, 2009. I did not accept that all the evidence was served on the tenant although the landlord was able to produce registered post receipts for the date of June 04, 2009 to the tenant's forwarding address. Alternatively, the landlord gave oral testimony as to the contents of these submissions. The tenant was denied submission of late evidence into the hearing – not previously forwarded to the landlord or the Branch. Alternatively, the tenant gave oral testimony as to the contents of these submissions.

The written Tenancy Agreement states the tenancy started December 01, 2008. The tenants vacated the suite March 30, 2009, which the tenant claims was one day earlier than was ordered by the previous Dispute Resolution Officer. Rent in the amount of \$2,400.00 was payable in advance on the first day of each month, and a security deposit of \$1,200.00 was collected at the outset of the tenancy on November 18, 2008. The tenancy agreement also provided the tenant will pay a 2/3 share of the monthly cost of utilities of gas and hydro.

The TENANT submits, and it is undisputed by the landlord, that there was no move-in inspection done at the outset of the tenancy. The tenant further testified that on vacating the suite of the majority, if not all, of their belongings on March 30, 2009, the landlord then denied the tenant re-entry into the suite on that day, allegedly, "so as to not allow us to do the move-out inspection". A dispute ensued and the tenant called the police to gain entry to her suite to no avail, and was told to take the matter up with Residential Tenancy Branch. The landlord testified that the tenant had moved all, expressly, "every bit", of her belongings from the suite and had no reason to return – besides which, "she had already taken possession of her new place", and had purportedly moved all her belongings there. The landlord does not dispute the tenant was denied re-entry to their suite on March 30, 2009, and there is no evidence of a move-out inspection provided by either party. Within 15 days of the end of the tenancy, the landlord then applied for dispute resolution to retain the security deposit.

The tenant claims that when the landlord denied her re-entry to the suite on March 30, 2009, she had come back to take possession of some kitchen items (\$97.46), and a costly herbal supplement (\$800) the size of a large shoe box, left in the refrigerator of the suite. The landlord strongly denied that any item at all was left in the suite on the tenant returning – that the suite was void of any item, and that if such items were noted they would have been returned to the tenant. The tenant testified that some time later (4 weeks after her move) she could not locate two (2) pairs of skates and determined that she also left these two (2) pairs of skates at the suite (\$200).

The tenant also claims that as a result of the tenant denying her access to the suite on March 30, 2009, she and her family were offered to stay at the home of an acquaintance for 2 days – for which the tenant voluntarily paid the acquaintance \$350. The tenant also wants to be compensated \$150 for loss of enjoyment of the suite for the two days (March 30 & 31 2009) she was denied entry to her suite.

The tenant further testified that in the last five (5) days of the tenancy, the landlord cut off the water supply to the suite and that although they were in the process of moving, this caused her family significant inconvenience and loss of enjoyment of the suite in their final days there. The landlord does not dispute the tenant's testimony in this regard, saying he did this to avoid the tenant causing additional water damage; on top of that she allegedly had already done (landlord's evidence). The tenant's claim for this disruption and loss of enjoyment and restriction of the water facility / service is \$300.

The LANDLORD testified he has submitted and calculated the tenant's portion of the electricity utilities bills according to the tenancy agreement and that the amounts fairly reflect the tenant's use of these facilities. It is noted that the electricity bills represent an average usage of \$52.44 per month. The tenant disputes this amount saying she currently pays considerably less - however, did not provide conditions of her current electric utility usage. The tenant also offered a copy of the tenant's current natural gas usage for May 2009 in a different house. Although I understand the intent of the tenant, I note that both examples are not good evidence - they do not offer a credible comparison, given the different seasonal conditions and the many variables associated with comparing two different domiciles.

The landlord further testified he has submitted and calculated the tenant's portion of the natural gas utilities bills according to the tenancy agreement and that the amounts fairly reflect the tenant's use of these facilities. The landlord provided invoices for these utility claims. The tenant disputes these amounts saying she was not in control of the heating thermostat as it was relocated to the basement and controlled by the landlord. The tenant's testimony is that her family had to endure vast fluctuations of periods of heat and cold, and therefore she should not be liable for the amounts the landlord is claiming. However, I note that the tenant is already claiming a monetary amount of

\$300 for *loss of quiet enjoyment*, in part related to this problem, as compensation for the landlord's undue control of the heat for the rental unit and a lack of water supply for the last five (5) days of tenancy. The landlord's testimony attempted to explain how this sort of scenario was impossible.

The landlord testified and alleging that on January 29, 2009 the tenant intentionally poured a quantum of water through a floor area, flowing into the basement suite, causing water damage to the basement ceiling and walls. The water flow damage occurred in an area of the house void of water pipes or other water ingress routes. The landlord testified that the only way the water flow occurred where it did was if someone poured a large amount of water all at once, "buckets of water", through the floor and baseboard area, and gravity simply conducted the water's course. The landlord testified that a sole estimate for a reconstruction remedy of the water damage was quoted at \$875. The tenant denied doing any of what the landlord described in testimony, saying that the landlord's house had water leaks at the outset of the tenancy from the toilet and kitchen, and later a plugged up sink also caused some leaking.

The landlord testified that water from the aforementioned water "pouring" soaked a box spring in the laundry room belonging to the downstairs tenant, which the landlord estimates compensation to the owner of the box spring at \$250. However, the landlord testified he has not made any such restitution to anyone for this purported damage to the box spring, and hopes he will not have to.

### **Analysis**

I have reviewed all submissions and reflected on all the testimony and claims of the parties, and given full regard to all the parties' circumstances. It is remarkable the extent at which some of the evidence contrasts. In my review I find there are portions of the tenant's testimony which I favour over the landlord's testimony, and there are portions of the landlord's testimony that I favour of the tenant's.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss.

Simply stated, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

As to the landlord's claims:

From the landlord's claim for Terasen Gas bill *Mar. 06 – Mar. 31, 2009* (225.77) I deduct \$25.74 from the gas bill dated April 03, 2009, as these are charges identified on the bill effective as of April 01, 2009. – balance of this claim is reset at \$208.61.

**I dismiss** the landlord's claim of \$100 for late fees as late fees other than permitted by legislation are an *unconscionable* term of the tenancy agreement, and cannot be enforced.

**I dismiss** the landlord's claim of \$250 for water damage to a box spring as it does not meet the test for damage and loss, nor has the landlord proven he should, must or will compensate anyone for this purported damage.

**I acknowledge** the landlord's offer to deduct \$20 from the overall electric bill charges, as a means to compensate the tenant for an interruption of power for a quantum of days.

**I find** the landlord is entitled to the tenant's share for electric utilities totaling **\$189.79**.

**I find** the landlord is entitled to the tenant's share for gas utilities totaling **\$554.30**.

**I prefer** the landlord's testimony in respect to the water ingress into the basement suite from the tenant's upper suite. On the preponderance of the evidence and on the preponderance of probabilities as to how the water emanated from the upper suite – I prefer the landlord's account: that a large amount of water was somehow caused, intentionally or otherwise, to drain from the tenant's upper suite and that this caused water damage below. I do not accept the tenant's account that known leakage issues from several minor sources contributed to the water damage in the lower suite. Some Dispute Resolution Officers accept multiple, or competing quotes as a means of establishing compensation, in lieu of receipts / invoices for actual work performed for remediation of damages. In the absence of competing quotes, or receipts / invoices for remedial work performed, I accept the landlord's stated sole quote at 80%, or an entitlement to the landlord of **\$700**.

As the landlord is partially successful in their application, the landlord is entitled to partial recovery of the filing fee in the amount of **\$25** bringing the landlord's total entitlement to **\$1469.09**.

As to the tenant's claims:

**I find** the tenant's claims for:

- \$97.46 - miscellaneous kitchen utensils - total
- \$200 - purported value of two (2) pairs of skates – total



- \$800 - “bird’s nest” – “edible nest of cliff swallows” – herbal supplement

are not supported by sufficient evidence and do not meet the above noted test for damage and loss claims. **I prefer** the landlord’s testimony that the suite was left void of any and all belongings, and that any item remaining in the suite would have been conspicuous. I decline to award the tenant these costs and dismiss these portions of the tenant’s claim without leave to reapply.

**I find** the tenant’s claim for \$350 paid an acquaintance for 2 day’s accommodation is also not supported and does not meet the test for damages and loss claims. I decline to award the tenant this cost and dismiss this portion of the tenant’s claim without leave to reapply.

**I find** the tenant is entitled to her claim on application for **\$150** for loss of quiet enjoyment due to landlord locking tenants out of suite one day earlier than specified in the Order of Possession dated March 25, 2009 issued by the previous Dispute Resolution Officer.

**I further find** the tenant is entitled to her claim on application for **\$300** – for loss of quiet enjoyment due to claim landlord cut off water supply to the suite for 5 days, and as to a plugged sink, as well as the landlord’s undue control of the heating for the rental unit.

In the absence of evidence of a start of tenancy inspection, or end of tenancy inspection being facilitated by the landlord, **I find** that the landlord’s right to claim against the security deposit has been extinguished, as per Section 36 of the Act. Therefore, I must grant the tenant the return of the security deposit with accrued interest in the amount of **\$1202.16**.

As the tenant is also partially successful in their application, the tenant is entitled to partial recovery of the filing fee in the amount of **\$25** bringing the tenant’s total entitlement to **\$1677.16**.

The respective entitlements of the parties are reflected as follows:

Total of tenant's entitlements	\$1677.16
Total of landlord's entitlements (\$1469.09)	-\$1469.09
<b>Owed to tenant</b>	<b>\$208.07</b>

**Conclusion**

**I grant** the tenant a monetary order under Section 67 of the Act for **\$208.07**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.