



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes                      MNDC, OLC, ERP, RP, PSF, LRE, RR, FF, O

### Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, an order for the landlord to make emergency repairs, an Order for the landlord to make repairs, an Order for the landlord to provide services or facilities required by law, an Order to suspend or set conditions on the landlords right to enter the rental unit, to allow the tenant to reduce her rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee for this application.

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

### Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to;
  1. comply with the *Act*, regulations or tenancy agreement
  2. make emergency repairs for health or safety reasons
  3. to make repairs to the unit, site or property?
  4. to provide services required by law?
  5. to suspend or set conditions on the landlords right to enter the rental unit?



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- Is the tenant entitled to reduce her rent for repairs, services or facilities agreed upon but not provided?

## Background and Evidence

Both Parties agree that this tenancy started on June 15, 2008 for a monthly rent of \$1,950.00.

The tenant testifies that the landlord misrepresented the condition of the property when it was advertised for rent. The tenant states there were many deficiencies found when she moved into the unit. She states a move in condition inspection was completed with the agent of the landlord and this it stated that the tenant must inspect the property and within three days notify the landlord of any deficiencies. The tenant states she noted many deficiencies and sent these to the landlord by letter which should then form part of the move in condition inspection report. The tenant states that the manager at that time agreed to fix everything noted by the tenant however the tenant states this manager left the landlords employ after four months and most of the deficiencies noted still remain.

The tenant claims the landlord has failed to maintain the unit both prior to and after her tenancy commenced. She states the following repairs require treatment:

- Black mould is present. The tenant did at first agree to remove this in her deficiency letter but found it has eaten into the wood and the wood now requires treatment.
- The carpet has not been changed as agreed at the start of her tenancy. The tenant states the landlord now says she has to move from her rental unit in order for the carpet to be replaced and the tenant maintains this should not be a requirement to replace the carpets.
- The windows have never been cleaned by the landlord. The lease states the landlord is responsible for window cleaning and there are skylights the tenant cannot access which are filthy. The tenant also claims the screens are broken and when asked to repair or

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replace them the landlord told her that he doesn't provide screens so refused to replace them.

- The electrical system requires attention from a qualified electrician to ensure it complies with health and safety. The tenant states the breakers blow regularly if she plugs anything else into them and she is concerned about the safety of the system.
- The heating system has not been served or maintained, there is no evidence that the furnace has been regularly serviced and the ducts are all dirty. The tenant also states the master bedroom and basement are five degrees colder than the rest of the house.
- The kitchen countertop is badly damaged and is peeling away from the wall. The landlord has caulked it again but this was done badly. The kitchen cupboards are in a poor condition with scratched and damaged wood.
- The counters in the bathroom are in a similar condition. There is also mould around the windows and the bathroom fixtures are in need of replacement as the sealant is coming away. The tenant states the landlord did come to inspect these issues and told the tenant the mould was dirt and the bathroom fixtures are just dirty.
- The chimney has not been cleaned by the landlord. The tenant states she paid to have the chimneys' cleaned so she could safely use them.

The tenant states these issues effect the value of the property and of her tenancy. And she seeks a Monetary Order in compensation of a rent reduction of \$350.00 for each month of her tenancy from July, 2008 to the sum of \$10,500.00.

The tenants witness states she saw the condition of the property at the outset of the tenancy and her impression was that it was very run down. It had moss growing on its roof and the gutters were very clogged, the skylight was filthy, the kitchen cupboards were all worn and

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scratched, the carets were worn with no pile remaining, the bathroom fixtures were old and chipped, the linoleum floors were old and worn and there was black mould in the bathroom and bedroom. The witness states the tenant told her she had written an extensive letter to the landlord concerning these defects and the manager had said they would deal with all the deficiencies.

The landlord cross examines the witness and asks her if she saw the defects herself. The witness replies that she had. The landlord asks if the house is still in the same condition and the witness replies that yes it is, two and half years later. The landlord asks the tenant why she thought the tenant had taken the house if it was in such a bad condition and she replies that the tenant told her that the repairs and deficiencies would be done by the landlord.

The tenant testifies that the landlord has failed to comply with recommendations from the City of Burnaby staff to remove or properly inspect dangerous trees on the property. The tenant states she spoke to the City's landscape engineer and was told that the landlord was told by the City approximately one year prior to her tenancy to remove and inspect the marked trees. The tenant states some of the trees are hollow and some are diseased. These are significantly close to her townhouse and could potentially cause a danger should they fall or branches break off. The tenant requests that the landlord comply with the city recommendations and hire a professional arborist to inspect the trees and for the landlord to act on the recommendations of the inspection.

The tenant testifies that the landlord does not meet their obligations concerning snow removal at the property. The tenant states on at least five occasions in 2008 the complex was snowed in completely and the tenants had to remove the snow themselves by hand. The tenant states the landlord is negligent in acting promptly to remove the snow and often does not meet these obligations until either the next night or 48 hours later.

The tenant testifies that there is insufficient visitor parking at the complex and the landlord has failed to allocate a parking spot in a fair and appropriate manner. The tenant claims a shared parking spot has been allocated to a neighbouring tenant dispute her request to rent it when this

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other tenant has a carport and only one car. The tenant states this facility has been withdrawn from her.

The tenant seeks an Order to restrict the landlords' right to enter her rental unit. The tenant states as she is a lawyer her unit may often contain materials subject to professional and ethical obligations and must be kept confidential. The tenant states she has advised the landlord that due to this, except in emergency situations, the landlord is not to enter the unit unless the tenant or her designate is present. The tenant states the landlord does not give 24 hours written notice because they do not allow for the three days for the notice to be served after it has been posted to her door and does not give valid reasons for entry. The tenant requests an Order that the landlord may attend inside the unit only by prior arrangement.

The tenant called her second witness who is a neighbour. The tenant asked her witness if his kitchen cupboards and carpets looked like hers. The witness replies yes they did but the landlord painted them about five years ago. The carpet was also replaced about 12 years ago. The tenant asked this witness if the landlord has ever cleaned his chimney, eaves or guttering. The witness replies not to his knowledge and states the landlords have come out on occasion during his 18 to 19 year tenancy but generally he has to clean these areas himself. The tenant asks the witness to explain about the parking. The witness states that the area they used to share is now allocated to one tenant and the spot has been marked with his unit number. He states this has been done unfairly as generally this tenant's drive is empty.

The landlord cross examines this witness. And states the problems with parking cannot be solved by the tenants. The witness states that they all shared it on a first come first served basis but the landlords have now created exclusivity. The other visitor's parking spaces have to be shared.

The landlord states that the tenants' mother was parking in this space and when the new tenant moved in to his unit the space was assigned to him. This was a fire lane space which was no longer required. The landlords witness testifies that he was told this parking space would be allocated to his unit when he moved into his unit in 2008. The landlords witness also states that

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the property is well maintained by the landlord and although he is not an expert it appears the trees are not a risk to the property or his family.

The tenant cross exams this witness and asks if they shared the parking space when he first moved in. The witness replies he did share it with her as she told him she had a previous arrangement with the previous tenant to share the spot. This stopped when the tenant acted aggressively towards him concerning the parking. The witness also states the parking is included in his rent.

The landlord testifies that they consider that the tenants' request for maintenance has been addressed in a proper and timely manner. The landlord testifies that the black mould in the windows and bathroom is due to the tenant not cleaning the window tracks and not opening the window to prevent condensation. The landlord states there is no mould on the walls. This is not a new property and it must be kept ventilated to prevent mould occurring. The landlord states the tenant does not keep her house in a clean condition. The landlord has provided no documentary evidence.

The landlord states the tenant has 40 to 60 amp breakers. The tenant plugs too many items in and they suggested to her that this will cause the breakers to blow.

The landlord testifies that she took advice from her manager concerning the tenants' carpets and was told they could not be changed while the tenant resided in the unit. The landlord states they offered the tenant another unit but she refused the offer. The landlord states the tenant should not complain as she rented the house in this condition. The landlord states they don't know how to help the tenant as she won't let them into her unit. The landlord claims the furnace has been serviced regularly.

The landlord testifies that she is not sure that the marks on the trees were made by the City and they were only advised to remove the trees as no Order has been given. The landlord states they have had an arborist look at the trees and they have no plans to remove them.

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The landlord states it is their responsibility to remove the snow from the drive way in the complex and they do this regularly when it snows.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. With regards to the tenants claim that the landlord has not maintained the property, I find the burden of proof in the matter lies with the tenant. When a tenant's evidence is then contradicted by the landlord, the tenant will need to provide additional corroborating evidence to satisfy the burden of proof. In this instance I find the tenant did complete a list of deficiencies at the start of her tenancy and has provided photographic evidence that most of these deficiencies remain at this date. Section 32 of the *Act* states:

*A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and*  
*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

While I accept the property is an older property that is no excuse for the landlord to not maintain the property according to section 32 of the *Act*. Consequently I find the tenant is entitled to an Order for the landlord to maintain the property and make repairs or inspect the black mould in the windows and bathroom and install vents or fans if required to prevent condensation build up in this area, replace the carpets as agreed at the start of the tenancy without asking for vacant possession, repair the window screens and clean the windows on a regular basis, inspect and make any repairs to the electrical systems by a qualified electrician, Inspect the heating system and clean the ducts by a qualified contractor, make repairs to the cabinetry in the kitchen and bathroom, the work tops and plumbing fixtures and inspect the chimney and clean if required. These repairs and inspections must be carried out within 30 days of receiving this decision

With regard to the tenants claim for compensation of \$10,500.00, I find the value of the tenancy has been reduced due to the length of time the tenant has had to wait for repairs to her unit.

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However, I find the sum requested of \$350.00 per month since the beginning of her tenancy to be excessive. I do however find that the value of the tenancy has been reduced by \$100.00 per month and therefore I find the tenant is entitled to a Monetary Order to the sum of **\$3,000.00**.

I further Order the tenant to reduce her rent by \$100.00 per month to \$1,850.00 until such a time as the repairs are completed or the tenant moves from the rental unit.

With regard to the tenants application regarding emergency repairs; I find that section 33(1)(b) of the Act states that emergency repairs means repairs that are necessary for the health or safety of anyone or for the preservation or use of the residential property. The tenant argues that the trees marked by the City are potentially dangerous and seeks an Order for the landlord to comply with recommendations made by the city regarding these trees. The tenant has provided photographs of the marked trees but as provided no other evidence such as a letter from the City regarding the imminent danger to others or residential property by the trees. Therefore, I do not deem this to be an emergency repair but do Order the landlord to engage a professional arborist to inspect the trees, provide the tenant with a copy of the report and act on any recommendations made in the report within 30 days of receiving this decision.

With regard to the tenants claim for the landlord to restore the parking facility; in this matter the tenant must show that the parking facility in question was include as part of her rental agreement. I find that when the tenancy started this parking facility was part of a shared facility or visitor's parking space which the tenant was able to use on a first come first served basis. As the parking space was not part of the tenancy agreement I decline to make an order in this matter that the parking space be withdrawn from the tenant it has been allocated to and to be put back into common usage. Consequently, this section of the tenants claim is dismissed.

With regard to the tenants claim for an Order for the landlord to provide snow removal services; I find by the landlords own admission that snow removal is part of the landlords responsibilities. I also find that from the tenants' evidence, testimony and the testimony of her witness that the



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landlord has not always acted expediently in dealing with heavy snow falls to ensure the drive way of the complex is cleared so as not to impede access to and from the complex by the tenants living there. Consequently, I Order the landlord to ensure snow removal is carried out within a reasonable time after each snow fall to ensure the tenants access to and from the complex.

With regard to the tenants claim for an Order to suspend or set conditions on the landlords right to enter the rental unit; the tenant argues she has confidential documents in the unit and therefore she or a designated person must be in attendance when the landlord enters the property. I find the tenants argument that the landlords access should therefore be restricted to be in violation of the landlords right to enter the property and the tenant must ensure any confidential documents are locked away to ensure she can maintain her solicitor/client privilege.

However, I would caution the landlord to respect the tenants' rights when issuing a 24 hour Notice to enter the unit and to ensure they observe the time period of three days when a notice is posted to a tenants' door. The landlord must also ensure the reason for entry is valid and is documented on the Notice. It is my recommendation that the tenant and landlord reach a mutual agreement for entry to allow the landlord to carry out repairs and inspections of the property and the tenant should be cooperative with the landlord to fit into schedules arranged. If the tenant cannot be present she must arrange for another person to be present if she does not want to leave the landlord or her agents unsupervised. The tenant must also be cooperative in moving her belongings to allow a carpet fitter to replace the carpets. No Order will be issued concerning this matter and this section of the tenants request is dismissed.

As the tenant has been partial successful with her claim I find she is entitled to recover the **\$50.00** filing fee from the landlords pursuant to section 72(1) of the Act.

A Monetary Order has been issued for the following amount: **\$3,050.00.**



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## Conclusion

**I HEREBY FIND** in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,050.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

**I Order the landlord** to make repairs and carry out inspections as detailed above within 30 days of receiving this decision.

**I Order the tenant** to reduce her rent by \$100.00 per month until such a time as all the repairs are carried out.

**I Order the landlord** to engage a professional arborist to inspect the trees, provide the tenant with a copy of the report and act on any recommendations made in the report within 30 days of receiving this decision.

**I Order the landlord** to ensure the tenants access to and from the complex is not impeded by ensuring snow removal is carried out in a timely manner.

The remainder of the tenants' application is dismissed 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 08, 2010.

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Dispute Resolution Officer