



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNDC, MNSD, RR, FF

## **Introduction**

This hearing dealt with the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / return of the security deposit / authority to reduce the rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

## **Issues to be decided**

- Whether the tenant is entitled to either or both of the above under the Act, Regulation or tenancy agreement

## **Background and Evidence**

Pursuant to a written tenancy agreement, the initial fixed term of tenancy is from November 15, 2010 to May 31, 2011. Thereafter, tenancy has continued on a month-to-month basis. Monthly rent is \$650.00 and is payable in advance on the first day of each month. A security deposit of \$325.00 was collected. Both parties participated in the completion of a move-in condition inspection and report on November 16, 2010.

In the tenant's original application filed on June 7, 2011, he applied for compensation in the total amount of \$5,000.00 arising from "5 wks of non use of balcony....from May 1/11 to June 7/11." At that stage he had already set out a request to the landlord in writing by letter dated May 31, 2011 for a related adjustment in rent. Subsequently, on June 27, 2011, the day before the hearing, the tenant submitted a more detailed and enhanced justification for the same amount of compensation. During the hearing, the landlord acknowledged receipt of this updated application and testified that with the exception of the dispute around the balcony, the items included in the updated application had not previously been brought to her attention.

As to the aspect of the dispute which concerns the balcony, in her written submission the landlord states in part as follows:

[The tenant] understood that the balcony would need to be repaired when he moved in. The work on his balcony began on May 17 and was completed by June 7. From the date that [the resident manager] removed a section of the balcony deck to assess the scope of work (May 17) to the date of the repairs being completed (June 7), the job spanned a period of exactly 3 weeks, not 5 weeks as [the tenant] indicates in his application. The repairs would have been completed even sooner, except that there were 3 layers of old decking and more wood rot than expected, and the weather did not cooperate by being rainy and cool. Regarding [the tenant's] privacy, all of the work conducted on the balcony was done during business hours, as [the resident manager] was very conscious of not wanting to disturb tenants early in the morning or in the evening. [The tenant] also has vertical blinds that he is able to close over the sliding glass balcony doors.

During the hearing the tenant exhibited a combative nature and frequently interrupted the testimony of the landlord's agents.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

An overview of the tenant's miscellaneous allegations are set out below:

- i) calking around the bathtub took approximately 3 days to complete;
- ii) unit was not properly cleaned at the start of tenancy;
- iii) delay in painting closet doors led to tenant's exchange of closet doors from another unit;
- iv) sold flooring for another unit to the landlord in exchange for 1 year's worth of "free" parking;
- v) tenant's van was vandalized in the underground parking;
- vi) delay in repairs to front entrance door contributed to inability to sleep;
- vii) delay in elevator repair;
- viii) improperly functioning toilet lever;
- ix) improperly installed bathroom towel holder;

- x) unresolved problem with rodents and silverfish;
- xi) extended period of time to repair balcony from May 10 to June 14, 2011;
- xii) “mess” left outside his unit door from another resident, which he had to clean up;
- xiii) delay in replacement of a dysfunctional lock on the mailbox.

Following from all of the above, the tenant has provided a breakdown of the manner in which he has calculated his entitlement to compensation. The various aspects of this breakdown and my findings around each are set out below:

**\$325.00: return of damage deposit.** Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In short, the disposition of the security deposit is determined after the end of tenancy. As this tenancy is still ongoing, the tenant’s application for return of the security deposit is premature. Accordingly, this aspect of the application is hereby dismissed.

**\$370.00: underground parking balance.** Further to the absence of an opportunity for the landlord to know the details of this aspect of the dispute and to have sufficient opportunity to respond, I find there is insufficient explanatory information or other evidence to support this aspect of the application. Accordingly, it is hereby dismissed with leave to reapply.

**\$80.00: value of groceries thrown out as a result of rodents.** I find there is insufficient evidence to support this aspect of the claim. For example, there is no description of groceries that were allegedly thrown out, and there are no receipts to support the purchase of any groceries that were allegedly thrown out. In the result, this aspect of the application is hereby dismissed.

**\$300.00: truck rental.** I find there is insufficient evidence to support the proposition that the only remedy available to the tenant in the circumstances of this dispute is to move out of the unit. Further, the cost claimed has not been incurred, and this aspect of the application is therefore hereby dismissed.

**\$300.00: 2 movers.** For reasons identical to the reasons cited immediately above, this aspect of the application is hereby dismissed.

**\$80.00: mail redirect.** For reasons identical to the reasons cited immediately above, this aspect of the application is hereby dismissed.

**\$300.00:** utilities reconnect. For reasons identical to the reasons cited immediately above, this aspect of the application is hereby dismissed.

**\$300.00:** loss of balcony. Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) 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.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I prefer the landlord's evidence where it concerns the period of time required to effect repairs to the balcony (3 weeks). Further, while I find that weather conditions precluded an earlier completion date for the necessary repairs, the fact remains that a facility included in the tenant's rent (balcony) was not fully available to him for the 3 week period. In the result, I find that the tenant has established entitlement limited to **\$210.00\***, calculated on the basis of \$10.00 per day over 21 days (3 weeks).

**\$812.00:** loss of elevator. Further to the absence of an opportunity for the landlord to know the details of this aspect of the dispute and to have sufficient opportunity to respond, I find there is insufficient explanatory information or other evidence to support this aspect of the claim. Accordingly, it is hereby dismissed with leave to reapply.

**\$1,000.00:** cleaning suite. There is no indication on the move-in condition inspection report that the unit required cleaning at the start of tenancy. Further, there is no evidence that the tenant otherwise informed the landlord of any concern he may have had about the cleanliness of the unit when tenancy began. Additionally, there is no detailed justification for the manner in which the calculation has been made in arriving at \$1,000.00. For all of the aforementioned reasons, this aspect of the application is hereby dismissed.

**\$250.00:** cleaning hall. In the absence of sufficient evidence to support this aspect of the application, it is hereby dismissed.

\$807.50: stress and inconvenience. Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**. Further, Residential Tenancy Policy Guideline #6 addresses "Right to Quiet Enjoyment," and provides in part as follows:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

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In find there is insufficient evidence to support the tenant's application for compensation, and this finding is detailed above under the various particular aspects of the application.

Where it concerns the balcony in particular, I am satisfied that in consideration of weather conditions the repairs were made as efficiently as possible. However, in regard to the short term limited access to the balcony, the tenant has successfully applied for compensation as set out above.

\$50.00: filing fee. As the tenant has achieved only minimal success with this application, I find that he has established entitlement limited to recovery of \$25.00\*, which is half the filing fee.

### **Conclusion**

Following from the above, I find that the tenant has presently established entitlement to compensation limited to \$235.00 (\$210.00 + \$25.00). I hereby ORDER that the tenant may withhold this amount from the next regular payment of monthly rent.

As set out in detail above, a number of aspects of the tenant's application are hereby dismissed, while others are hereby dismissed with 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*.

DATE: June 30, 2011

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Residential Tenancy Branch