



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RP, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application.

The parties both attended and provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. Both parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence and testimony has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement justified?
- Is the tenant's application for an order that the landlord make repairs to the unit, site or property justified?

### Background and Evidence

The parties agree that this fixed-term tenancy began on July 3, 2011 and expires on June 30, 2012, and the tenant still resides in the rental unit. Rent in the amount of \$1,700.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On June 15, 2011 the landlord collected a security deposit from the tenant in the amount of \$850.00 and a pet damage deposit in the amount of \$850.00 from the tenant. No move-in condition inspection report was completed at the commencement of the tenancy.

The tenant testified that the parties conducted a walk-through of the rental unit prior to the tenant moving in. The tenant had told the landlord that the unit was dirty so the landlord hired cleaners and all cleaning issues were dealt with.

The tenant had been in Alberta, and upon returning to the rental unit on July 31, 2011 the tenant noticed water on the floors in the kitchen. Upon investigation, the tenant discovered that the crawl space had water dripping from its ceiling. The tenant sent a text to the landlord, and the next morning received an email from the landlord indicating that the landlord had contacted the strata council by email and a handy-man. The landlord's email also stated that there had been a flood in 2 other units a year or more prior from irrigation, and that if irrigation was the problem again, water would have to be shut off. The parties then spoke on the phone and the landlord asked the tenant to go outside and look at the air conditioner. No water or problems were noted with the air conditioner. The laminate started to squish and expand.

The tenant also told the landlord that there was no hot water, and the landlord sent a friend later that day, but the friend was not able to light the hot water tank. The tenant also showed the landlord's friend the water in the crawl space. The friend called the landlord and recommended a plumber, stating that it didn't look good. About an hour after the friend left, a plumber showed up but couldn't find the source of the leakage so turned off the water to prevent further flooding.

The landlord called the tenant the next day stating that a plumber would attend the rental unit, who found that the water source was a defective part in the fridge which leaked into the crawl space; the water line went from the fridge to under the sink, and it's the type of fridge that dispenses water and makes ice. The plumber turned the water back on and was able to light the hot water tank.

Insurance adjusters attended to take photos and stated that the floor would have to be removed. The appliances were pulled out and large dryer fans were placed in the rental unit. The restoration company employees told the tenant that it would get very warm in the unit and advised the tenant to avoid using the air conditioner or opening windows to assist with drying; the fans ran for 8 days. The tenant described the rental unit as unbearably hot, and has 2 small children.

After the floors were removed, the landlord attended the rental unit. Once the fans were removed, the tenant still had no flooring on the main floor until September 16, 2011. The tenant further testified that the tenant and children could not stay in the rental unit except for sleeping due to unbearable heat.

The tenant further testified that a window in the master bedroom is broken and remains about 1 ½ inches open, and cannot be closed. Four different people have looked at it, and the landlord told the tenant that they were awaiting parts. Photographs of the window were provided in advance of the hearing, and they show that the window sits above the window ledge, leaving a gap under the window.

Also, the water dispenser and ice maker in the fridge still don't work. The tenant testified that this unit was chosen to rent because it's new and has new appliances. The dishwasher also requires repair; the tenant emailed the landlord about it, who responded that the tenant broke it. The tenant testified that neither the tenant nor the tenant's family broke the dishwasher.

During the period when the floor was gone, a lot of ants entered into the rental unit. They aren't as bad now, but some still come in from under the base-boards. The landlord told the tenant the restoration company would look at it, but they didn't arrive until after the floor was installed, and it never got dealt with. The garage is full of ants, too, and the landlord's friend brought ant traps, but they don't work.

The tenant also provided copies of emails that were exchanged between the parties, which includes an email from the tenant to the landlord requesting for the month of August, 2011:

- 7 days of full day rental compensation (repairs, construction work and emergency repairs that had to occur), and the tenant requests \$55.00 per day rental fee X 7 = \$385;
- ½ days daily rental rate compensation for the remainder of the month of August, 2011 for the unit having no flooring throughout the entire downstairs/main floor/front entrance/half bath of unit, for which the tenant requests \$27.5 for ½ day rental fee X 24 days = \$660.00;
- A percentage of the \$111.00 power bill to compensate for industrial heat drying fans (1200 amp) that were on for 9 days in the home running for a 24 hour period per day;
- Reimbursement for fans that the tenant purchased for \$70.00, which the tenant agrees can remain with the landlord;
- Total deductions = \$1,045.00
- Including fans = \$1,115.00;
- For September, 2011, a full day rental compensation for 3 days of construction, or \$56.00 X 3 days = \$198.00;
- 12 days of ½ day rental compensation for the days prior to the flooring installation, or \$28.00 (1/2 daily rate) X 12 days = \$336.00;

- Total deductions for September = \$534.00.

A copy of the power bill from July 29, 2011 to August 8, 2011 in the amount of \$111.79 was also provided. The tenant claims \$33.57 for that utility due to the constant running of the industrial fans. The bill also contains a discount of \$7.88 for payment by a specific date.

The landlord testified that the flood was a major emergency repair, and the landlord had asked the tenant if the tenant would be staying elsewhere, but the tenant chose not to. The landlord's insurance covered the repairs and removal of furniture.

The landlord further testified that a part has been ordered for the window and for the dishwasher.

The landlord further testified that the tenant was not told it was a new house.

The landlord offered the tenant \$200.00 for the inconvenience, which was 50% of the rent on a per diem basis. The rental unit is 1890 square feet, and the lower level affected by the flood is 690 square feet.

The landlord also provided copies of several emails exchanged between the parties, the first of which is dated August 30, 2011 and offers a rent abatement of \$200.00. The tenant responded to that email the following day setting out the condition of the rental unit, including:

- "No use of A/C, having to keep windows closed, with 12 noisy, heat fans blowing hot air through the house, with high temperatures outside being in the high 30's;
- Plumbers, restoration workmen, and the insurance agent strata members entering in and out of the unit daily;
- No use of the entire main floor/downstairs of home including kitchen appliances;
- Kitchen flooring being removed
- No water or hot water
- Presently no flooring throughout main floor of home
- Household repairs not complete including master bedroom window, tub shower hose, side yard gate, kitchen light bulbs."

Further, one of the parties provided photographs, however there is no way of determining which party provided them. The photographs show the living conditions of the tenant and the tenant's family during the construction as well as an ant infestation.

Another email was provided by the landlord, which spoke of the excess power bills. The landlord had indicated to the tenant in one of those emails that the bill for the prior year was about \$85.00 for the same time period.

### Analysis

The *Residential Tenancy Act* requires a landlord to maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. A landlord is also required to make all emergency repairs. In the circumstances, I find that the landlord has acted reasonably and responsibly as a landlord for the most part.

In this case, the tenant discovered a leak on August 1, 2011 and notified the landlord, and advised the landlord there was no hot water. The landlord responded on August 2, 2011 and had a friend and a plumber attend the rental unit, but no repairs could be made and the hot water tank could not be lit, and water had to be turned off. The water and hot water were restored on August 3, 2011. A restoration company as hired by the landlord's insurance company and the floors on the main level of the rental unit were removed. In addition, the tenant and the tenant's small children had to endure a home with no floors, industrial fans, and immense heat in the summer months.

The tenant claims  $\frac{1}{2}$  days daily rent for 24 days in August, 2011 when there was no flooring in the main level of the rental unit, and 10 days of no rental payments during construction. I find that the tenant is entitled to recovery of  $\frac{1}{3}$  of the rent for the period between August 1, 2011 and September 16, 2011, for a total of 47 days, or \$859.14. The testimony before me is that the main floor of the rental unit is the "living area," which comprises less than one third of the entire living space. Because that portion of the rental unit is the main living area, I find that the tenant is entitled to  $\frac{1}{3}$  for that period of time.

With respect to the power bill, I have no evidence before me to justify what the amount of the power bill would have been if the industrial fans were not in place, other than mention of it in the landlord's email stating that it was approximately \$85.00 the year prior. The tenant also would have had a discount on the power bill by paying it by September 15, 2011, so using the discounted amount of \$103.91, less \$85.00, I find that \$18.91 is a fair amount to award to the tenant.

The tenant has not provided any evidence of the cost of purchasing additional fans for use, and therefore, I find that the tenant has failed to establish that claim.

In summary, I find that the tenant is entitled to recovery of \$859.14, being the time that the main level of the rental unit had no flooring; \$18.91 for excess power usage by the industrial fans.

The ant infestation has not been dealt with in a timely manner, and I order the landlord to ensure that an exterminator attend the rental unit to eradicate the bugs. The landlord has been aware of the problem since August, and if the landlord has not caused the ants to be eradicated by November 15, 2011, the tenant will be at liberty to apply for further compensation.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby order the landlord to hire an exterminator to eradicate the ant infestation by November 15, 2011.

I further order the landlord to complete repairs to the master bedroom window and dishwasher within the rental unit by November 15, 2011.

I further grant a monetary order in favour of the tenant in the amount of \$928.05 pursuant to Section 67 of the *Residential Tenancy Act*. This amount may be deducted from a future month's rent payable, or otherwise collected or enforced. This order is final and binding on the parties.

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: November 01, 2011.

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Residential Tenancy Branch