



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR; MNDC; FF; O

### **Introduction**

This is the Tenant's application to recover the cost of emergency repairs from the Landlord; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord with the Notice of Hearing documents by courier on July 6, 2011. The Landlord acknowledged receipt of the documents. Pursuant to the provisions of Section 71 of the Act, I find that the Landlord was sufficiently served with the Notice of Hearing documents.

The Tenant testified that she served the Landlord with copies of her documentary evidence by courier, sent on July 6, 2011 and July 18, 2011. The Landlord acknowledged receipt of the documentary evidence.

The Landlord did not provide any documentary evidence to the file or to the Tenant.

### **Issues to be Decided**

- Is the Tenant entitled to a monetary order for emergency repairs and compensation for loss of use of the rental unit?

### **Background and Evidence**

The parties agree on the following facts:

This tenancy began on May 1, 2009. Monthly rent was \$850.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00 and a pet damage deposit in the amount of \$400.00 at the beginning of the tenancy. The deposits were returned to the Tenant on March 28, 2011.

The Tenant gave the following testimony and documentary evidence:

At some point in the early morning of March 5, 2011, a water pipe burst in the ceiling of the rental unit. The Tenant was away from the rental unit when the flood happened. She returned to the rental unit at 10:00 a.m. to find that someone had turned the water off, but there was a lot of standing water in the rental unit. The Tenant tried to call the emergency number for the Landlord, but there was no answer. The Tenant provided copies of her cellular phone record in evidence. After trying to reach someone for three hours, the Tenant called a restoration company, who extracted the water and applied an antimicrobial substance. The restoration company also installed a dehumidifier for three days and then a turbo fan for three days. The Tenant provided the Landlord with a copy of the bill in the amount of \$526.40, but he refused to pay the bill. A copy of the bill was provided in evidence. The Tenant negotiated a reduced rate and paid the restoration company \$280.00. A copy of the reduced invoice was also provided in evidence. The Tenant seeks compensation in the amount of \$280.00 for the amount she paid the restoration company.

The Tenant testified that there was a large hole in the kitchen ceiling from where the pipe had burst and she could not use the kitchen. She stated that the rental unit smelled musty and the floor was spongy. The Tenant provided photographs of the rental unit in evidence.

The Tenant testified that she told the Landlord she could not live there and he agreed that he would repay her the rent for the month of March if she moved out by March 20, 2011, because he could not fix the floors with her belongings in the suite. The Tenant testified that she agreed and moved all of her belongings out of the rental unit on March 20, 2011, but the Landlord did not give her back the month's rent. The Tenant testified that she did not live in the rental unit at all after the flood. The Tenant seeks compensation in the amount of \$850.00 for repayment of March's rent.

The Landlord gave the following testimony:

The Landlord testified that the rental property was built in the 1960s and has plumbing problems. He stated that he turned the water off on March 5, 2011, at 7:00 a.m. and had a plumber fix the pipe. He stated that he was going to call "a carpeting man and contractor", but no one was available until the day after the flood. He stated that he shampooed and cleaned the carpet, but the "wetness was still there".

The Landlord testified that the Tenant stated she could not stay, so he agreed if she moved out on the 20<sup>th</sup>, he would return March's rent and the deposits. The Landlord testified that at some point later, the Tenant said she would move out on the 26<sup>th</sup> so he

did not believe they had an agreement with respect to March's rent. The Landlord stated that he did not know if the Tenant lived in the rental unit after the flood or on what day she moved all of her belongings out. The Landlord testified that the Tenant did not give written notice to end the tenancy and that he lost use of the rental unit from March 5 to March 31, 2011.

### **Analysis**

I have carefully considered the testimony of both parties and the documentary evidence provided by the Tenant. It is clear from the photographs that the burst pipe caused considerable damage to the ceiling, kitchen cupboards and floors in the rental unit. There is a substance that appears to be mould or mildew on exposed wood in the walls and ceiling. The Tenant also provided a letter from the restoration company, which states, in apart:

"It is my professional opinion that the sub floor should be replaced under the carpet pad. The area under the kitchen cabinets should be drilled/vented. The kitchen floor, walls, cabinets were all wet and should be properly repaired.

In picking up equipment on Tuesday March 8/11 it was noted that the sub floor was still wet and still requires drying. The suite had not since been attended to and the hole in the ceiling was yet to be repaired 3 days later when the equipment was being returned."

The Landlord testified that he had difficulty reaching someone to start restoration in the rental unit. The Tenant was able to find a restoration company. The Tenant provided cell phone records which confirm that she placed 6 calls to the emergency number provided by the Landlord, between 10:47 a.m. and 1:15 p.m. before calling the restoration company at 1:49 p.m. I am satisfied that the Tenant attempted to reach someone at the emergency number provided by the Landlord and gave them a reasonable amount of time under the circumstances before she called a restoration company. I accept the Tenant's undisputed testimony that she provided the Landlord with a copy of the restoration company's bill. Therefore, I grant the Tenant's application to recover the amount she paid to the restoration company from the Landlord, in the amount of **\$280.00**.

Based on the testimony of both of the parties, I find that they reached a mutual agreement to end the tenancy. I find that the Tenant did not have use of the rental unit from March 5 – 31, 2011, and award the tenant a pro-rated amount for that loss in the amount of **\$740.32** (\$850 x 27 days/31 days).

The Tenant has been successful in her application and is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

I hereby provide the Tenant a Monetary Order against the Landlord in the amount of **\$1,070.32**.

**Conclusion**

I hereby provide the Tenant a Monetary Order in the amount of **\$1,070.32** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 17, 2011.

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Residential Tenancy Branch