



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes:

**MNDC, OLR**

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and an Order the landlord complete repairs to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenant submitted his application on December 2, 2011. The tenant's evidence was served to the landlord just 5 days prior to the hearing, as required by the Rules of Procedure. Although the landlord did not have a full understanding the monetary claim being made until the evidence was supplied; the landlord was willing to proceed with the hearing. The tenant's application failed to include a calculation of the claim made.

Some of the written evidence submissions made by the tenant referenced costs that were not included in the tenant's application. Those matters were not considered during this hearing.

Issue(s) to be Decided

Is the tenant entitled to completion for damage or loss in the sum equivalent to 1 month's rent?

Must the landlord be Ordered to complete repairs to the rental unit?

Background and Evidence

The tenancy commenced on December 1, 2008, rent is \$328.00 per month, due on the first day of each month.

The tenant has claimed compensation as the result of a loss of value of his rental unit during a construction project completed in his 200 unit building. The tenant has claimed the equivalent to half of one month's rent for July and August, 2011.

The parties agreed that in May 2011, the landlord commenced renovation work in the building and that on April 15, 2011, an information session was held for tenants, which outlined the project. It was expected that work would occur within the tenant's unit over approximately 12 to 13 days. The landlord was to complete exterior work, water system re-piping and fire protection upgrades, corridor upgrades, asbestos abatement and in-suite work to allow access to pipes and fire alarm systems.

The tenant submitted that his unit was one of the first to be entered; that the construction company lacked any cohesive plan, that workers were constantly in and out of his unit and that the construction company failed to adequately clean his unit or protect his belongings. Later in the construction process the tenant noticed that other areas of the building, such as the office, would be covered in plastic sheeting while work was being completed, but this did not occur in his unit.

The tenant stated that he complained on 6 or 8 occasions to the building manager, who would then refer him to suite 204, where the construction manager worked. The tenant also placed approximately 6 calls to a support worker who had been identified to assist tenants with problems. The tenant stated that the phone would not be answered or the voice mail was full.

The tenant testified that the constant, on-going interruptions, the loss of use of his unit for 1 complete day with a \$10.00 coffee shop gift card as compensation, the failure of

the construction company to properly clean his unit when they removed drywall and asbestos, resulted in a loss of value of his unit. The tenant stated that on one occasion when he complained about the dirt left in his unit as worker came by with a dirty mop. Later the tenant discovered that some occupants had a cleaning service come to their units.

The construction site manager stated that stoves would be removed should there have been water pipes behind the stove. The tenant stated his stove was placed in the hallway for 2 days; the site manager could not recall that occurring in the tenant's unit.

The landlord testified that they had 2 workers identified who the tenants could call for assistance. Notices were posted throughout the building that instructed the tenants how to contact the workers. One of those workers was contacted by the landlord the day prior to the hearing; she indicated that there was no record of the tenant having called to request assistance.

The building manager testified that he recalled the tenant approaching him on 1 occasion regarding his missing towels and shower curtain, and that the tenant was referred to the construction site manager. The building manager stated that the tenant did not approach him at any other time to report deficiencies.

The site construction manager stated the tenant approached him once, to report his missing towels and shower curtain. As they could not be sure that the items had not been thrown out so the items were replaced.

The landlord agreed that there may have been some confusion at the start of the construction project; much co-ordination was required and there were times they had to enter suites for specific reasons, for short periods of time. The landlord denied that the tenant's belongings would not have been protected, especially during the asbestos removal. A unit was available to tenants, who contacted the assistance workers, should they find the use of their own units difficult during times where entry was required.

The landlord state if serious cleaning issues were brought to their attention, cleaning was provided.

The tenant stated that his hot water tap drips and that he requires a door sweep, as a deterrent to bed bugs. The landlord agreed to investigate the hot water tap. The landlord stated there is no correlation between door sweeps and bed bugs.

The landlord provided a history of bed bug treatments provided to the tenant's unit. The tenant stated he does not currently have bed bug concerns and that he will report any to the landlord. If the landlord receives a complaint they will complete an inspection of the suite. The landlord uses a professional pest control company.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the loss of use of his unit, the tenant has claimed loss equivalent to half of one month's rent for July and August, 2011, as the result of a loss of quiet enjoyment, I find that the tenant's use of the unit was disrupted. There is disputed testimony in relation to the services that the tenant attempted to access; the tenant testified the approached the landlord and tried to reach to worker who was identified to assist; the landlord state there was no evidence of any more than 1 contact made with staff.

In the absence of evidence that convinces me, on the balance of probabilities, that the tenant attempted to avail himself of the services of the identified workers, I find, on the balance of probabilities, that the tenant has not mitigated the claim he has made for a loss equivalent to one month's rent.

In relation to the constant entry to the tenant's unit and removal of his stove for 2 days, I find, on the balance of probabilities, that the tenant was disturbed beyond entry required for 12 to 13 days, as set out in the initial construction plan and that the tenant's testimony in relation to the stove was believable. The parties did agree that the tenant's unit was the first to be entered, that there could have been some lack of efficient execution of the work and that the tenant did experience an unusual amount of disruption and entry to his home. The construction manager could not say, with any confidence that the stove had not been removed and I find, on the balance of probabilities that the tenant's testimony was reliable.

Therefore, I find that compensation in the sum of \$10.00 by way of a coffee card was insufficient compensation and that the tenant is entitled to compensation in the sum of \$100.00, as a nominal amount for the loss of use of his unit during construction.

There is no evidence before me that a door sweep is necessary; the tenant has not shown this is a housing standard as required by section 32 of the Act.

No Order is required in relation to bed bug treatment; the tenant reports he does not currently have any concerns other than his request for a door sweep; the evidence before me indicates that the landlord has responded to reports of bed bugs in the unit.

The landlord had not been aware of the dripping tap; this will be investigated. An Order is not required.

The balance of the claim is dismissed.

### Conclusion

I find that the tenant has established a monetary claim, in the amount of \$100.00, which is comprised of damage or loss. The tenant may deduct this amount from future rent owed; or, in the alternative, the tenant may enforce a monetary order issued in the sum of \$100.00. If rent reduction is arranged, the monetary order will be of no force.

Based on these determinations I grant the tenant a monetary Order in the sum of \$100.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the claim is dismissed.

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 19, 2011.

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Residential Tenancy Branch