



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MNDC, RR

### **Introduction**

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement and for a rent reduction.

### **Issue(s) to be Decided**

1. Is the Tenant entitled to compensation?
2. Is the Tenant entitled to a rent reduction?

### **Background and Evidence**

The Tenant has resided in the rental property since May of 2005 and in her current rental unit since approximately July of 2006. The Tenant's rent is subsidized by B.C. Housing and her portion of the rent is \$140.00 per month plus \$10.00 for cable.

The Tenant said that on December 10, 2011, water leaked into her suite from behind the refrigerator. The leak was caused by a broken pipe an exterior wall. The Landlord claimed that the pipe was connected to an outside faucet and that the damage occurred because the Tenant may have left the outside faucet on. The Tenant denied that she left the outside faucet on and claimed that it in previous years the Landlords' maintenance person removed the outside tap during the winter months. The Tenant said there were two hoses attached to the tap; one that belonged to her and one to the Landlord. The Tenant said she drained her hose in September 2011 and did not use it after that time. The Tenant also claimed that she checked the hose after the flooding and there was no water in it or any sign of damage to it. The Tenant said she had seen some children playing around outside the same evening and believed they may have turned on the water.

The Tenant said that after she found the water leaking into the kitchen, she advised a representative for the Landlord and they turned off the tap. The Tenant said she mopped up as much water as she could and the Landlord, R.H., came the following day with a shop vacuum and tried to extract water from the carpeting. The Tenant said nothing was done again for 10 days and by that time the rental unit started to smell very musty. The Tenant said she has a serious lung condition and did not think she should sleep in the rental unit so she slept in the lobby of the rental property for a few days. The Tenant said she finally approached the Landlord about the smell in the rental unit

on December 19, 2011 and a restoration company came to inspect it the following day. The Tenant said the kitchen cupboards, flooring and lower section of the wall had to be removed and much of it including plumbing was stacked in the living room. Special “abatement measures” had to be taken to remove flooring which contained asbestos.

The Tenant said the Landlord told her she could not afford to put her in other accommodations but offered her the use of a suite occupied by another Tenant who would be away for 2 months. The Tenant said she agreed to this arrangement and moved in on December 28, 2011. The Tenant admitted the other suite was very similar in layout and size but argued that she incurred additional expenses because it did not have a telephone and she could not gain access to food items in her kitchen cupboards and had to replace them. The Tenant said she also had to replace expensive medication that was spoiled from the excess moisture in the rental unit.

The Tenant said she still paid rent (and cable) for December 2011 and January although she did not have the use of the rental unit or the cable or her telephone. The Tenant said she later discovered that the Landlord compensated the other tenant for one month’s rent for the use of his suite. The Tenant argued that the Landlord should have paid her instead to stay in alternate accommodations of her choosing.

The Landlord argued that she did everything she was required to do by providing the Tenant with alternate accommodations. The Landlord denied telling the Tenant that there was no money to place her in alternate accommodations but in her evidence at the hearing she stated repeatedly that the Landlord had no funds and received little by way of compensation from her insurer for a loss of rental income as a result of the flood.

### **Analysis**

Section 32(1) of the Act says that “a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and having regard to the age, character and location of the rental unit makes it fit for occupation by a tenant.” Section 28 of the Act states (in part) that a Tenant is entitled to quiet enjoyment including but not limited to the right to freedom from unreasonable disturbance.

The Landlord argued that the Tenant may have been responsible for the flooding by turning on or leaving on an exterior tap. The only evidence the Landlord provided in support of that assertion was her hearsay evidence that on December 19, 2011 an employee of the restoration company found the tap turned on. I find that this evidence is hearsay and unreliable. Furthermore, I find that there is no evidence as to what caused the pipe inside the wall to crack. In summary, there is no evidence that the Tenant was responsible for the flooding on December 10, 2011.

I find that it was not until December 19, 2011 that the Tenant brought to the Landlords’ attention that there was a continuing problem from the flooding because all of the water

had not been cleaned up. I further find that it was not until December 28, 2011 that the Tenant was placed in alternate accommodations. Although the Tenant argued that the Landlord should have offered her compensation to live elsewhere, I disagree. A Landlord has a duty to mitigate their damages under s. 7(2) of the Act and is entitled to take whatever steps they see fit to do so provided that those steps are reasonable in the circumstances. I find that the Landlords' decision to place the Tenant in another suite in the rental property was reasonable.

However, I find that the flooding on December 10, 2011 significantly interfered with the Tenant's use and enjoyment of the rental unit. In particular, I find that the Tenant had to live in a musty smelling suite for 18 days (and then had to spend at least 2 of those nights sleeping in the lobby of the rental property out of concern for her health) before she was provided with alternate accommodations. I also find that the Tenant was unable to use her telephone and to access many of the belongings including her telephone and many items from her kitchen cupboards due to the construction and had to incur additional expenses. I further find that the Tenant continued to pay for cable service although she had no use of it.

In summary, I find that the Landlords acted reasonably in offering the Tenant alternate accommodations and that this did not relieve the Tenant from having to pay rent because she would have had to pay living expenses regardless of where she lived. However I also find that the Tenant lost not only the use and enjoyment of her rental unit while she resided there from December 10 – 28, 2011 due to the flooding but also the amenities it had (such as telephone, cable and her possessions) for the following month when she had to vacate to accommodate repairs. Consequently, I award the Tenant a total of \$150.00 to compensate her for all of these things.

The Parties confirmed that the construction in the rental unit has now been completed. The Tenant said she is not able to move back in until the carpets have been cleaned to remove gyproc dust and other debris. Given that the Tenant will likely be moving back into the rental unit soon, I find that her application for a rent reduction is premature and it is dismissed with leave to reapply. However, I order pursuant to s. 72(2) of the Act that the Tenant may deduct the award of \$150.00 from her rent (and cable) payment for March 2011 when it is due and payable to the Landlord.

### **Conclusion**

The Tenant's application is granted. 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: January 31, 2012.

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Residential Tenancy Branch