



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MND, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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.

### Preliminary Matters

The landlord made a late, 1 page evidence submission that was not properly served to the tenant. This evidence was set aside; the tenant did not make any written submissions.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$840.00 for damage to an elevator door?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The parties agreed that the tenant and his friends were trapped in the building elevator for a period of time. A call was placed to the on-site manager, who said it would be approximately 35 minutes until the technician could arrive.

As it was becoming stuffy in the elevator, one of the tenant's friends called 911.

There is no dispute that the fire department attended and that they broke the elevator door open with a crow-bar. The fire department personnel determined that no one was in medical distress.

The landlord is claiming the cost of the elevator door repair.

The tenant did not believe he was responsible for the repair as his friend had made the call to 911.

### 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.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord

There is no dispute that the tenant was in the elevator, that his friend called 911 and that the door was broken as a result.

There was no evidence before me that the tenant or any of his guests were in medical distress and that they could not have waited until the technician opened the door to the elevator. Therefore, I find that the call to 911 was made in the absence of any medical emergency and was used in an effort to be released from the elevator as it was not fully ventilated. The actions of the tenant’s guest resulted in the damage to the elevator door.

Section 32(3) of the *Act* provides:

*(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

As the tenant's guest was responsible for the unnecessary attendance of the fire department to the rental unit and the subsequent damage caused to the elevator door, in the belief someone was in distress, I find that the tenant is responsible for the costs incurred by the landlord.

As the landlord failed to provide verification of the cost of the door, I find the landlord is entitled to nominal damages in the sum of \$150.00, in recognition of the loss. The balance of the claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$200.00, which is comprised of damage to the elevator and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. .

Based on these determinations I grant the landlord a monetary Order in the sum of \$200.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: March 28, 2012.

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Residential Tenancy Branch