



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

### Preliminary Matters

The tenant had provided an additional evidence package submitted one day prior to this hearing. As all evidence must be provided at least 5 days prior to a hearing I advised the parties that I would not consider this package at all.

In their written submission the landlords identified that many of the issues identified in the tenant's Application were subject to a decision written on November 28, 2011 by Dispute Resolution Officer (DRO) XXXXXX after a hearing on the same date. In that decision DRO XXXXXX granted the landlord a monetary order for compensation for utilities; a curtain rod replacement; and the filing fee.

At the start of this hearing, I confirmed with the tenant that the written terms of the tenancy agreement regarding the utilities included the following services: phone, cable, hydro, internet, oil, and laundry. I also confirmed with the tenant that during the hearing of November 28, 2011 that matters related to cable; oil heating; hydro; and the laundry facilities were all discussed. The tenant testified the matters relating to moving costs and a commission charged by the landlord's were not discussed in the previous hearing.

The tenant also sought to return of her security deposit. As per the November 28, 2011 decision the security deposit was applied against the debt the DRO determined the tenant was responsible for in that hearing.

The tenant submitted in her written evidence that in the previous hearing the DRO advised her that they wouldn't be reviewing any of the issues in her responses during that hearing. In the tenant's submission for this hearing she has included the submissions she provided to the November 28, 2011 hearing. This evidence confirms the issues noted above were considered by the DRO on November 28, 2011, as such these matters are *res judicata*.

*Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7<sup>th</sup> Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

As such, I amend the tenant's Application to exclude all matters adjudicated in the previous hearing including: security deposit; cable; oil heating; hydro; and the laundry facilities.

In addition, the tenant testified she sought compensation in the amount of \$2,250.00 "for being poisoned/very ill, caused by the 40 year old oil furnace that was not serviced/maintained from January 2010 – March 25, 2011."

However, I noted the tenant had not applied for this either in her Application itself or in her current "Summary of Expenses" which had totalled the full amount of her claim and did not include this \$2,250.00. I find to amend the tenant's Application to include this claim would be prejudicial against the landlords and I disallowed the amendment.

I advised both parties the tenant is at liberty to file a separate Application for this matter at a future date. I also advised both parties that either party can file an Application for Dispute Resolution for claims against the other party for this tenancy for up to 2 years from the end of the tenancy on *any new matters that have not been the subject any previous decisions*.

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of a "commission" and for additional moving expenses, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

#### Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on December 7, 2009 for a month to month tenancy beginning on January 1, 2010 for a monthly rent of \$950.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid.

The tenant submits that the landlord had arranged for a former tenant of theirs to stay in this tenant's rental unit for a temporary visit and that she charged the guest \$35.00 per day according to the landlord's suggestion. She states that the landlord had included a commission of \$35.00 in the ledger that was used in the previous hearing and the amount was included in the order resultant from that hearing.

The landlord submits that the ledger had been provided as evidence for that hearing and the tenant should have taken the opportunity to dispute this amount at that time. From the tenant's evidence submitted for this hearing the tenant submitted a copy a

letter dated November 22, 2011 that she had submitted to the previous hearing. On the third page of that letter the tenant outlines the details of this \$35.00 amount and the tenant's disagreement with the amount of this charge in the landlord's ledger.

The tenant seeks compensation for "additional" moving costs as a result of the landlord's failure to maintain the stairs on the residential property that caused her movers to use alternate access. The tenant asserts that as a result the movers took approximately 2 hours longer to move her out than it took to move her in to the property.

The tenant testified that when she moved in to the rental unit her movers took 4.5 hours to move her items in and 7 hours to move her out at the end of the tenancy at a rate of \$124.00 per hour. The tenant testified the movers had to carry things two buildings over and then upstairs which caused them take the additional time. The tenant seeks \$248.00 in compensation.

The landlord asserts that it always takes additional time to move out a residence than to move in because when moving out the movers must ensure items are packaged properly; furniture may need to be wrapped; and the movers must arrange the belongings in the moving truck to maximize its usage to minimize the number of trips required. The landlord states this differs significantly from when movers drop belongings off at the new location as they just need to remove from the truck and stack in the new residence.

### Analysis

In regard to the tenant's claim for the return of the item entitled "commission" I find that since the matter was included in the evidence provided by the landlord for the previous hearing; that the tenant had an opportunity to dispute this amount; and in fact, the tenant had submitted in her written statement for that hearing the matter was considered by DRO XXXXXXXX in her November 28, 2011. As such, I find the issue of "commission" is an additional matter that is *res judicata*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In relation to the tenant's claim for additional moving costs I make the following findings:

- The tenant has provided no evidence to substantiate how long it took to move her belongings into the rental unit;

- The tenant has provided no evidence or documentation from the movers that the use of the alternate stairs impacted the time it took them to move her belongings;
- The tenant has provided no evidence or documentation from the movers that they could not use the stairs on the residential property or why.

For these reasons, I find the tenant has failed to establish she is entitled to any compensation for additional moving costs.

### Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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 22, 2012.

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Residential Tenancy Branch