



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, OLC, RP, LRE, RR

### Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / an order suspending or setting conditions on the landlord's right to enter the rental unit / and permission to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on May 1, 2010. Monthly rent of \$2,000.00 is due and payable in advance on the first day of each month. A security deposit of \$960.00 and a pet damage deposit of \$500.00 were collected. The tenant testified that after one year in the tenancy, a move-in condition inspection report was completed, but that she never received a copy.

The tenant also testified that the unit had not been properly cleaned at the time when she moved in, and that numerous holes and marks remained on the walls throughout. Various other deficiencies also existed which she claims to have attended to herself; these include, but are not necessarily limited to, replacing missing or burnt out light bulbs at the start of tenancy, cleaning the cupboards and appliances at the start of tenancy, replacing a toilet seat and so on.

The landlord seemed tired of the responsibilities associated with being a landlord. He also appeared to be more interested in discussing an end date to this tenancy, rather than giving consideration to the tenant's various concerns about the condition of the

unit, as well as about the landlord's, at times, troublesome conduct and behaviour. The landlord claimed that he had personally served the tenant with a notice to end tenancy, however, the tenant testified that she had no knowledge of such a notice.

### Analysis

Careful consideration has been given to the documentary evidence submitted by the tenant, which includes photographs, as well as to the affirmed testimony of both parties. However, not all details related to the dispute are reproduced here.

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) Immediately below, particular attention is drawn to some of the statutory provisions which appear most relevant to the circumstances of this dispute.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act addresses **Landlord's right to enter rental unit restricted**, and provides, in part, as follows:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides, in part, as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

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Based on the documentary evidence and testimony of the parties, the various aspects of the tenant's application and my findings around each are set out below.

#### LANDLORD'S CONDUCT AND BEHAVIOUR

I hereby order the landlord to fully comply with section 28 of the Act, as above.

#### LANDLORD'S ACCESS TO THE UNIT

I hereby order the landlord to fully comply with section 29 of the Act, as above.

## MAINTENANCE & REPAIRS TO THE UNIT

Further to the provisions set out in section 32 of the Act, as above, the attention of the parties is drawn to Residential Tenancy Policy Guideline # 1, which speaks to “Landlord & Tenant – Responsibility for Residential Premises.”

As well, Residential Tenancy Policy Guideline # 37 speaks to the “Useful Life of Work Done or Thing Purchased.” In regard to **interior paint**, for example, this guideline provides that its useful life is **4 years**, and that **carpets** is **10 years**, and that **toilets** is **20 years**. I find on a balance of probabilities that the interior walls of the unit have not been painted for a number of years in excess of 4 years, and that the carpets are those originally installed when the unit was constructed more than 20 years ago. My orders to the landlord in these particular matters are included with other orders set out below.

## ORDERS

I hereby order that the landlord complete the following maintenance & repairs & other tasks at the unit by no later than **Saturday, June 30, 2012**:

- install new towel racks OR fully repair / restore existing towel racks in both bathrooms;
- restore the full functioning of the closet mirror door in the master bedroom;
- repair OR replace the vertical blinds in the master bedroom;
- repair / replace rotting drywall and eradicate mold in both bathrooms;
- repair & properly seal the leak in the dining room ceiling;
- have all carpets within the unit either professionally cleaned OR replaced;
- repair torn carpet at doorway to 2<sup>nd</sup> bedroom unless carpets are replaced;
- repair linoleum at front doorstep;
- have furnace ducts professionally cleaned;
- have the furnace professionally serviced;
- replace cracked toilet bowl;
- patch & re-paint all interior walls in the unit, and

- remove and dispose of freezer from the tenant's portion of the back yard.

### MONETARY COMPENSATION

Based on the documentary evidence and testimony, I find that the tenant has established entitlement to compensation in the amount of **\$2,000.00** which is the equivalent of one month's rent under the tenancy agreement. In this regard, I hereby order that the tenant may withhold the next regular payment of rent in this amount.

This entitlement arises out of numerous breaches to the tenant's right to quiet enjoyment, the tenant's continued exposure to various deficiencies in the unit despite requests to the landlord to complete repairs, and the landlord's unannounced & unauthorized termination of power to the tenant's freezer, resulting in the loss of all foods contained therein and rendering the freezer no longer usable.

### Conclusion

I hereby order the **landlord to comply with all orders** set out above, by no later than **June 30, 2012**.

I hereby order that the **tenant may withhold** the next regular payment of monthly rent in the amount of **\$2,000.00**.

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: May 24, 2012.

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Residential Tenancy Branch