



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF CNR ERP MNDC RPRR MNR MNSD OPB OPC OPR

### Introduction

This hearing dealt with applications by both the landlord and tenant. The landlord requested a monetary order and an order allowing retention of the security deposit. The tenant requested a monetary order. Both parties requested recovery of the filing fee from each other.

Both parties had originally requested other orders but these requests were no longer at issue because the tenant vacated the rental unit subsequent to the applications being filed.

Both parties attended the hearing and had an opportunity to be heard.

### Issue(s) to be Decided

Are the parties entitled to the requested orders?

### Background and Evidence

This tenancy began in May 2007 and ended on August 2, 2012. The rent was \$1,350.00 per month. The tenant paid a security deposit of \$675.00 at the start of the tenancy. On July 10, 2012 the tenant was served with a 10 Day Notice to End Tenancy for non-payment of rent. The tenant did not pay the rent within five days of receiving the Notice but did file an application disputing the Notice. Subsequently, the tenant moved out of the rental unit on August 2, 2012.

The landlord claims that the tenant did not return keys and failed to clean the unit properly upon move-out. The landlord also claims that he incurred several bounced cheque fees, a late payment penalty from the City of Vancouver taxation department and extra interest costs on his line of credit due to the tenant's failure to pay the entire rent when it was due on several occasions over the past year. The landlord did not submit any documentary evidence in connection with these allegations.

As for the tenant, she initially disputed the Notice to End Tenancy but resolved to move out of the rental unit in any event. The tenant had numerous complaints against the landlord which all appear to have begun last year when the residential property underwent a re-pipe. The tenant claims she was unable to use her kitchen during the re-pipe and had to eat out at restaurants for two weeks. The tenant also claimed that she was unable to work at home for a period during the re-pipe and that she had to join a yoga gym during the re-pipe in order to get the exercise and showers she needed. The tenant said that she had prepared a detailed typed chronology of events as to what occurred last year during the construction but I was unable to find it in the file. I gave the tenant a fax number to which she could send the document but it did not arrive. The tenant also claimed that she had repeatedly complained to the landlord about mold in the rental unit and that the landlord never did anything about it.

The tenant did acknowledge that she had unilaterally decided to pay less rent for several months due to the landlord's failure to attend to her mold complaints and that she had not paid any rent for August 2012. The tenant did not dispute the landlord's assertion that the reduction of rent paid over several months totalled \$1,140.00.

For his part the landlord disputed the tenant's claim in its entirety saying that it was all a fabrication. The landlord also testified that he had received no other complaints from any other tenants about the re-pipe. The landlord also noted that the tenant had not submitted any documentation in support of her claims for food, gym, etc.

In terms of documentary evidence, there was nothing submitted by the landlord and the documentary evidence submitted by the tenant was minimal. The tenant submitted several photos and several deposit slips showing rent payments to the landlord.

AnalysisLandlord's Claim

The landlord has made a monetary claim comprised of the following:

Unpaid rent (accumulated since July 2011)	\$1,140.00
Unpaid rent (August 2012)	\$1,350.00
Lock & key change	\$100.00
Cleaning	\$450.00
NSF charges (3 x \$30.00)	\$90.00
Late payment charge (City of Vancouver property taxes)	\$220.00
Interest charges on line of credit	\$228.00
<b>TOTAL</b>	<b>\$3,578.00</b>

I shall deal with each of these claims in turn.

Unpaid Rent (\$1,140.00) - This claim is comprised of \$1,140.00 in rent shortfall accumulated since July 2011. At the hearing the tenant did not dispute the landlord's claim in this regard. The tenant said she felt justified in reducing the amount of rent she paid due to the problems she claims to have been having in the rental unit. However, regardless of whether the tenant was unhappy with the rental unit, the tenant remained obligated under the Act to pay the rent in full when it was due. The tenant was not entitled to simply make deductions from the rent without first obtaining an order from the Residential Tenancy Branch. As a result, I am satisfied that the landlord has established this claim.

Unpaid rent (\$1,350.00) – The tenant did not dispute this portion of the landlord's claim. As a result, I am satisfied that this claim has been established.

Balance of landlord's claims – I have grouped the balance of the landlord's claims together because my analysis is the same for all of them. The landlord did not submit any supporting documentation for any of these claims and in the absence of such detail I do not find that I am able to establish with any certainty that these claims are justified. The tenant has disputed these claims and the burden of proving them – both as to liability and quantum - lies with the landlord. For example, in support of the claim for cleaning, I would have liked to see photos showing the condition of the rental unit at the end of the tenancy. Similarly, in support of the claim for changing the locks, I would

have liked to see the receipt or invoice for services. I therefore dismiss the balance of the landlord's monetary claims.

### Tenant's Claim

The tenant has made a monetary claim comprised of the following:

Cost of mold test	\$450.00
Cost of restaurant meals (2 people)	\$840.00
Cost of not being able to work from home	\$300.00
Cost of yoga pass (for showers & workouts)	\$620.00
<b>TOTAL</b>	<b>\$2210.00</b>

I shall deal with each of these claims in turn.

Cost of mold test (\$450.00) – The tenant has claimed \$450.00 for a mold test which she says needed to be done in the rental unit. However, the tenant stated at the hearing that no test was ever actually done and that she was claiming this amount because a test should, in her view, have been done. The landlord disputed that a test needed to be done because he claimed that there was no mold in the rental unit. However, regardless of whether there was any mold in the unit to begin with, I am not satisfied that the tenant has any rightful claim for a mold test that was never done. As a result, I dismiss this portion of the tenant's claim.

Cost of restaurant meals (840.00) / Yoga pass (\$620.00) - The landlord disputes these claims and pointed out that the tenant has provided no documentation in support. I agree with the landlord in this regard. I am not satisfied that the tenant has provided sufficient evidence either of the landlord's liability for these claims or for the amount being claimed. I therefore dismiss these claims.

Cost of not being able to work from home (\$300.00) – I am not satisfied that the tenant provided sufficient evidence in support of this claim. The landlord testified that no other tenant had any trouble continuing to live in their units while the building was being re-piped and the tenant provide no specificity in terms of dates and times when she was unable to work from home. Further, even if the tenant were able to establish the landlord's liability for the tenant's inconvenience, the tenant provide no details of the monetary claim she was making and how she arrived at this figure. Accordingly, I dismiss this portion of the tenant's claim.

### Conclusion

I find that the landlord has established a monetary claim in the amount of \$2,490.00. Accordingly, I order that the landlord retain the deposit and interest of \$692.03 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,797.97. This order may be enforced in the Small Claims Court and enforced as an order of that Court.

I dismiss the tenant's claim.

I dismiss both parties' requests to recover the filing fee from each other.

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*.