



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR, OLC, ERP, RP, PSF, RPP, LRE, FF

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for compensation for loss of personal items that were water damaged and for the filing fee. The tenant also applied for an order to set conditions or suspend the landlord's right to enter the rental unit, for the landlord to carry out repairs and for the landlord to return the tenant's personal property.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. At the start of the hearing, the tenant stated that she had no intention of continuing to rent the unit. She agreed that her personal belongings were still present inside the unit but stated that she was not occupying the unit and did not plan to return. The tenant also agreed that the landlord did not deny her access to her personal items and therefore her application for an order directing the landlord to return her property was moot and accordingly dismissed.

Since the tenancy is ending, the tenant's application to cancel the notice to end tenancy is not relevant and so also are the other portions of her application to carry out repairs and to set conditions or suspend the landlord's right to enter the rental unit.

Accordingly this hearing only dealt with the tenant's application for a monetary order for compensation for the loss of her personal items that were water damaged and for the recovery of the filing fee.

### **Issues to be decided**

Is the tenant entitled to compensation? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The parties entered into a tenancy agreement on July 27, 2012. Rent is \$730.00 due on the first day of each month. The tenant stated that she paid the security deposit plus rent for August 2012 by cheque. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The tenant stated that she moved her belongings into the rental unit prior to August 01, 2012. On August 01 she returned to the rental unit around 2:30 in the afternoon and found that there was a water leak from the ceiling of the living room. She stated that the room was covered with about one inch of water and the bottoms of four of her boxes were wet. The tenant filed photographs showing that one of the boxes was marked "fragile".

The tenant stated that she went upstairs to inform the landlord. The landlord's daughter assisted her in mopping and moving the boxes to the patio to dry out. The tenant stated that her father also assisted her in removing some of her personal belongings from the rental unit, to prevent further damage. The tenant testified that while she was loading boxes into her father's vehicle, she noticed two men coming into the unit. The tenant later found out that these two men were plumbers. The tenant left the unit around 6:00 pm and spent the night at her parents' home.

Later that evening, the tenant called the landlord for an update and he informed her that the plumbers were in to take care of the leak and that they would have it fixed as soon as possible.

The landlord informed me that the tenant put a stop payment on her cheque for the security deposit and rent for August. At the start of the hearing, I had asked the tenant about rent and the security deposit. She informed me that she had paid by cheque but failed to inform me that she had put a stop payment on the cheque.

The tenant stated that she returned to the unit on August 03 and the leak was not yet fixed. The landlord stated that the leak was already fixed by the time the tenant returned to the unit on August 03. It was complicated and it took the plumber two days to find the source of the leak. The leak was fixed as soon as the source was identified. The landlord stated that he had renovated the entire rental unit prior to the start of the tenancy and had even installed new appliances and therefore it was in his best interest to have the leak fixed as soon as possible, to prevent damage to the newly renovated suite.

The tenant testified that the next time she returned to the rental unit was on August 08. Initially the tenant stated that water was still dripping from the ceiling. Later the tenant stated there was no dripping. The tenant explained this discrepancy by saying that the ceiling was moist and the dripping was intermittent, so she was not sure of the exact dates and times of the dripping. She stated that she saw the landlord in the yard and called him in to check out the drip. She also stated that she asked him how to work the shower.

The landlord stated that on August 08, he came into the unit at the request of the tenant and showed her how to operate the shower. He stated that the drip had already been taken care of. All that was left to complete the job was to close off the holes in the ceiling with drywall and paint. The tenant filed photographs of the ceiling depicting the holes cut out.

The tenant is claiming compensation for the items that were water damaged and were present in the boxes. In her written submission, she states that the items in the box marked "fragile" consisted of fine China, but she was not making a claim to replace these items. She also states that several other items including shoes and clothes were damaged, but also not included in her claim.

The tenant's monetary claim of \$4,802.02 consists of costs of course materials, printed forms, various tool kits, guides, books on resumes and cover letters, replacement of three business licences, office supplies, bookkeeping files, photographs, BC Labour market reports, BC job search guide manual, rack cards, NCR forms, Luminary Training program manual and Small business BC toolkits.

The tenant stated that she runs a business in three cities and the business licences were water damaged. She stated she requested a replacement at the city office but was told that she would have to pay the entire cost of the annual licence. The landlord stated that he found out online that for a fee of \$5.00, a copy of the licence could be obtained. The tenant stated that she did not want a copy, but she needed an original because that was what was water damaged.

The tenant has also asked for the cost of her subscriptions to various publications and has filed receipts. The landlord pointed out that one of the receipts was for a subscription that would end in April 2013. The tenant replied that she had subscribed for 2011 and had lost all the copies due to water damage. She had filed a copy of her most recent subscription receipt because she did not have the one for last year.

The tenant has also made a claim for “NCR forms”. When I asked her what NCR stood for, she did not know. She attempted to look it up but did not find the answer.

The tenant has made a claim for the cost of bookkeeping because the paper files were damaged. I asked the tenant if she had contacted the accountant for a copy and she said she would have to pay for the entire service again, if she wanted a copy.

The tenant went on to add that she had contacted the City Inspector and arranged for an inspection at the end of August. The landlord stated he had no knowledge of the inspection. The tenant stated that during the inspection it was noted that the leak was not repaired and the report of the inspection will be sent to the landlord.

The tenant also accused the landlord of taking her copy of the tenancy agreement from the rental unit and ignoring her request for another copy. The landlord denied having taken her copy of the tenancy agreement. However the tenant did file a copy with her application and stated that she happened to have an extra copy. The tenant also stated that on one occasion she saw the landlord coming out of her unit and was concerned that he was entering the unit in her absence.

The tenant has not physically occupied the unit and has not paid any rent. However her belongings are still inside the unit and she still has full access to the rental unit. The landlord asked about unpaid rent and I informed him that he would have to make his own application. I also informed the tenant that until she removed her belongings from the rental unit, the landlord was unable to rent the unit to new tenants and was therefore suffering a loss of income, for which she could be liable.

The tenant filed photographs of the wet boxes and one photo of an open binder which contains printed material. The upper one third of the pages appears water stained. The photo also depicts a compact disc in an envelope a portion of which is wet. Other than this one photograph, the tenant has not filed any photographs to depict the extent of the damage to the contents of the boxes. Two photographs show boxes that do not appear to be wet – but are tipped over and the contents consisting of binders and printed material are lying outside the box.

### **Analysis**

Based on the sworn testimony of the both parties, I find that a leak did occur and caused some water damage to the tenant's belongings. I have to determine whether the landlord was negligent in responding to the problem or did he act in a timely manner?

I also have to determine the extent of the damage, the tenant's attempts to mitigate her losses and whether the amount of compensation as claimed by the tenant is appropriate.

Based on the documentary evidence and verbal testimony, I find that the landlord acted in a timely manner to locate the leak and fix it. Since the suite was newly renovated, it seems more likely than not that the landlord would act quickly to limit damage and mitigate his losses. Plumbers worked on the leak within a few hours of the tenant reporting the problem. Therefore I find that the landlord acted responsibly.

I also find that the tenant is attempting to claim full costs of courses, business licenses, manuals, tool kits etc and did not file proof of any attempts made to obtain replacement copies. In particular, I find that the tenant is attempting to profit from this incident by claiming the full cost of business licenses when a copy can be obtained at a fraction of the cost.

The tenant is also claiming the full cost of the accountant's services because the reports were damaged. It is not unreasonable to expect that the accountant will have an electronic or paper copy of the reports and will provide copies at no charge or a minimal charge. I find that it is more likely than not that the accountant did not ask for full service charges to provide a copy of a report of a service already paid for.

The tenant did not file photographs of the damaged contents of the boxes, except for one photograph which shows minimal water stains to the top one third of the pages in a binder. Therefore I find that the tenant has not proven that the quantum of her monetary claim fits the degree of water damage to her documents.

I also find that the tenant has not attempted to mitigate her losses by looking to obtain copies of the damaged documents. Instead she is claiming for the full cost of courses, licenses, tool kits, manuals etc.

Even though I find the monetary claim of the tenant to be unreasonable and I find that the landlord acted responsibly, I also find that the tenant did suffer some inconvenience and damage to her possessions. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

To determine the amount of the award, I take into consideration the amount of damage and the inconvenience endured by the tenant and her attempts to mitigate her losses.

Based on the photograph of one binder and the photographs of the boxes, filed by the tenant, I find that approximately one inch of water did minimal damage to the contents of the boxes. The tenant is claiming for damage to the contents of three boxes. Since only the bottoms of the boxes were water damaged, I find that only the contents lying at the bottom of the boxes would likely be damaged.

The binders have plastic covers that protect their contents to a certain degree and therefore I find that minimal damage was done to the tenant's documents. In addition the tenant filed only one photograph of the damaged contents of the boxes, which shows one binder. She also did not attempt to get replacements of her documents. The tenant did not have renter's insurance to cover costs for incidents such as this.

Accordingly, I award the tenant \$100.00 as a minimal award for the damage to her documents and for the inconvenience she endured for two days prior to the repair of the leak.

The tenant has been awarded a fraction of her claim of \$4,802.02 and therefore must bear the cost of filing her application.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the total amount of \$100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$100.00**.

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: September 14, 2012.

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Residential Tenancy Branch