



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), for a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally, to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### *Preliminary issue-*

Since the tenants' application was filed, the tenancy has ended and the tenants no longer require consideration of their request to cancel the Notice; as a result, I have excluded that portion of the tenants' application.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order and to recover the filing fee?

### Background and Evidence

The undisputed evidence is that this tenancy began in October 1990, ended on March 3, 2013, the monthly rent at the end of the tenancy was \$625.00, and the tenants did not pay a security deposit.

The rental unit was in the lower level and the landlord resided in the upper level of a house owned by the landlord.

The tenants' monetary claim is in the amount of \$4612.30 for hotel bills.

In support of their application, the tenants said that the female tenant noticed that the kitchen floor was wet, at which time they notified the landlord. The tenants said the landlord did not respond.

In November, according to the tenants, they noticed that all floors were wet, and that they rented a wet/dry vacuum in order to keep the floors dry. As well, the tenants said they were required to lay out plastic sheets on the floor in order to keep their feet dry. The tenants said they called the landlord constantly, with no response.

Not long after this, the tenants said they noticed a terrible odour, but the only response from the landlord was a suggestion that they use candles.

According to the tenants, on January 6, 2013, a plumber attended the rental unit to fix the leaking pipe and discovered a larger problem. The tenants said the plumber informed them that the pipe had been leaking for months, and then turned off the water.

The tenants said that on January 7, 2013, they were forced to move into a hotel, due to the floor and the wall between the kitchen and bathroom being removed by a jackhammer.

The tenants said that as a result of the plumber's work, they had no bathroom facilities or running water. The tenants said they were informed that project would take 5-6 days; instead as of the day the tenants filed their application for dispute resolution, the project was not complete.

The tenants submitted that on February 17, they came back to the rental unit and saw the Notice which had been posted. The tenants said that they vacated the rental unit on March 13, 2013, according to the terms of the Notice.

The tenants submitted that they paid rent for January and February 2013, and have not been able to use the rental unit from January 7, 2013, until the tenancy ended.

The tenants also submitted that they kept checking with the landlord, but her response was to eventually seek an end to the tenancy.

The tenants also contended that they were forced to stay in a hotel, due to having no running water or bathroom facilities, as they were being misinformed as to the completion date of the plumbing project, fully expected to resume the tenancy, and had no other options for a place to stay.

The tenant's relevant evidence included photos of the condition of the rental unit, correspondence to the landlord, and a hotel billing statement.

In response the landlord denied being notified of the leak until December 2012, at which time she contacted a plumber. According to the landlord, the plumber informed her that the leak came from grains and seeds in the pipes, placed there by the tenants.

When questioned, the landlord informed me that the plumber was unknown to her and she paid him in cash. The rest of the plumbing work, including the jackhammer removal of walls and flooring, was done by her nephew.

The landlord said that the plumbing work was finished by February 23, 2013. I note that a written summary, dated April 2, 2013, but corrected in the hearing to March 2, 2013, from the landlord, states that the kitchen and bathroom on that date were almost fully renovated.

The landlord also contended that the tenants had family members they could stay with on a temporary basis, and therefore was not necessary to incur hotel costs.

The landlord agreed she received rent for January and February 2013.

The landlord's relevant evidence included a receipt for plumbing services, dated January 8, 2013, and receipts from home improvement stores.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenants in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

Residential Tenancy Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

**Claims in Tort**

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

[Emphasis added]

Where a rental unit is damaged by an unforeseen event, such as fire, flooding or pest infestation, it is upon the landlord to repair the rental unit and residential property.

Additionally, this Guideline also states, in part:

A landlord is expected to provide the premises as agreed to.... If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

**Types of Damages**

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing.

I agree with this policy guideline.

In light of the above, it is upon the tenant to show that the landlord was negligent in addressing the issue of the leaking pipes. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. Accordingly, I have considered all of the evidence before me to determine whether the tenants have shown that the landlord acted

unreasonably in repairing the leaking pipes and restoring the tenants' bathroom and kitchen facilities and the flooring.

In the circumstances before me, I find the landlord failed to act promptly in addressing the repairs. In reaching this conclusion, I accept the testimony of the tenants that they were informed by the original plumber that the time frame to finish the plumbing and repairs was 5-6 days; yet the landlord did not hire a professional plumber, instead using a family member to make repairs. The landlord provided no evidence that this family member was a qualified plumber and I find the amount of time to complete the repairs, from January 6 through the date of the hearing, to be unreasonable.

Due to the above, I am persuaded that the landlord was negligent in this situation by not using the services of a licensed, qualified plumber to expedite the repairs and minimize the amount of time the tenants were forced to live elsewhere.

I also considered whether or not the tenants took reasonable steps to minimize their loss and have concluded that they did so. I reviewed the evidence of the tenants and I find that a daily basic room charge of \$71.19 to be reasonable, and that the tenants did not have other accommodations.

I also considered whether the tenants should be compensated for their accommodations through the end of February and I also conclude that they should be so compensated. In reaching this conclusion, I considered that the landlord collected rent for January and February, 2013, leading the tenants to believe the repairs were being made. I also had no evidence from the landlord that she kept the tenants informed of the progress of the repair work, instead she choose to seek an end of the tenancy by issuing a Notice for alleged cause, which sought to end the tenancy by March 17, 2013.

I also reject the landlord's assertion that the tenants caused the pipes to leak, due to having submitted no evidence of this claim.

I therefore find that the tenants are entitled to monetary compensation for out of pocket expenses for their reasonable hotel costs of \$4612.30 from January 7 to February 28, 2013, as shown by their receipts.

I find that there was merit to the tenants' application and I therefore award them recovery of their filing fee of \$50.00.

I find the tenants have established a total monetary claim in the amount of \$4662.30, comprised of their hotel costs of \$4612.30 and recovery of the filing fee of \$50.00.

Conclusion

I therefore grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$4662.30, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the landlord.

The landlord is authorized to retain the tenants' monthly rent payment for January and February 2013 as I have granted compensation to the tenants for those months.

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* and is being mailed to both the applicant and the respondent.

Dated: March 25, 2013

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Residential Tenancy Branch

