



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, OLC, ERP, RP, PSF, LRE, RR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her pet damage and security deposits (the deposits) pursuant to section 38;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

### Preliminary Issues

The landlord testified that he sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on January 15, 2013. The tenant confirmed that she received the 10 Day Notice on January 21, 2013, by regular mail. The landlord confirmed that on March 4, 2013, he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail. I am satisfied that the above documents were served to one another in accordance with the *Act*.

Two days before this hearing, the Residential Tenancy Branch (the RTB) received four packages of written evidence from the tenant by fax transmission. She testified that she sent this evidence to the landlord by emails and by dropping it on his doorstep on March 9, 2013. The landlord testified that he has not received copies of any of the tenant's evidence packages. The day before this hearing, the RTB received a 54 page submission of written evidence from the landlord. He testified that he had not sent a copy of this evidence to the tenant.

At the hearing, I advised both parties that their written evidence was submitted very late, less than five days before this hearing. I noted that the tenant had unsuccessfully attempted to join her application for many of the same items requested in her current application to an application from the landlord for an Order of Possession and a monetary award in a February 19, 2013 hearing before an arbitrator. Since the tenant's application was dismissed by the arbitrator with leave to reapply because of problems associated with her service of documents to the landlord, both parties should have been aware of the importance of adhering to the RTB's rules for providing documents to one another. In the Notice of a Dispute Resolution Hearing provided to the tenant for service to the landlord, it is noted that evidence must be given to the other party before the hearing. Instructions for the provision of evidence were included with that Notice, as was the statement that "Deadlines are critical."

After considering Rule 11 of the RTB's Rules of Procedure and in particular Rule 11.5, I advised the parties that I was unwilling to consider their late evidence. The tenant's failure to provide her evidence to the landlord in a way allowed under the *Act* in a timely way and, in the case of the landlord, to not supply his evidence to the tenant at all, would lead to a breach of the principles of natural justice if I were to consider their evidence. I advised the parties that I would not be considering their written evidence.

At the commencement of the hearing, I noted that the arbitrator in the February 19, 2013 hearing made a final and binding decision to end this tenancy, and issue an Order of Possession and a monetary Order to the landlord in her February 20, 2013. In the decision, the arbitrator also allowed the landlord to keep all of the tenant's deposits. The tenant also submitted an unsuccessful application for a review of the February 20, 2013 decision. The tenant confirmed that she had received a copy of the March 8, 2013 decision to dismiss the tenant's application for a review of the February 20, 2013, with the effect that the original decision and Orders remain in effect. The tenant testified that she is in the process of trying to arrange to have her possessions removed from the rental unit, although this is complicated by the remote location of the rental property.

Since the tenancy has ended and the tenant is preparing to vacate the premises, I advised the parties that many of the outcomes sought in the tenant's application are now moot points. For example, requests for orders to repair the premises or to restrict the landlord's right to enter the property are no longer at issue. In addition, I noted that the matter of the tenant's deposits has already been addressed in the February 20, 2013 decision. As such, in accordance with the legal principle of *res judicata*, this issue has already been decided and cannot be considered again in the context of the tenant's current application.

I advised the parties that the issues remaining for my consideration would appear to be the tenant's application for a \$25,000.00 monetary Order for losses and damage arising out of this tenancy (including an alleged failure of the landlord to provide services and facilities agreed to but not provided during this tenancy) and the recovery of the tenant's filing fee.

#### Issues(s) to be Decided

Is the tenant entitled to a monetary Order for losses or damage arising out of this tenancy? Is the tenant entitled to recover her filing fee from the landlord?

#### Background and Evidence

This tenancy for remote access rental accommodations commenced as an 8-month fixed term tenancy on October 15, 2011. Once the initial term expired, this has continued as a periodic tenancy. Until April 1, 2012, the tenant paid \$1,500.00 per month for the rental of the property and an additional \$250.00 for monthly moorage for her boat, as the only access available to this remote waterfront property is by boat. After April 1, 2012, the tenant's moorage payments were discontinued and the total monthly payment to the landlord reverted to the \$1,500.00 base rate for the premises. As this property is not serviced by the hydro grid, all power had to be provided by the tenant, who was responsible for propane for the generator. Heat, internet service and telephone service were also the responsibilities of the tenant.

The tenant alleged that the landlord misrepresented the quality of the internet service that would be available to her at this location and the quality of the cellphone service. The landlord testified that he told the tenant from the outset that cellphone service was "sporadic at best" and that this depended on the cellphone provider. He testified that he told the tenant that internet could be connected to the property, but there were some portions of the property (e.g., the dock and one of the bedrooms) where service was more consistently available than in other locations. He confirmed that the tenant told him repeatedly that she was encountering problems in getting her internet connected properly and that the installation of her service to the rental unit was "challenging." The

tenant did not dispute the landlord's sworn testimony that he eventually paid for the internet installation and allowed her one month's free rent in order to take into account the problems that she had experienced in staying connected with the outside world, a necessity for her work. The tenant said that the rent forgiveness was offered because she could not live in the rental unit and carry on her business for a period of time due to the inconsistent service she was receiving at the rental unit. She testified that she had to move to a Vancouver hotel in order to maintain her livelihood for a period of time.

The tenant outlined many deficiencies in this tenancy that led to her application for a monetary Order of \$25,000.00. She testified that the landlord's misrepresentation of the extent to which she could obtain reliable cellphone and internet coverage led to her loss of considerable income as she relied on such connections to maintain her photography business. However, she confirmed that she was responsible for her cellphone, internet and propane charges as set out in her tenancy agreement. She said that there was little heat in the premises for extended periods of time and no hot water. She said that she went many months without water, relying on showers at local community centres, which she could only access by boat, when her boat was operational. She also maintained that basic repairs were not undertaken by the landlord when requested.

The landlord testified that the tenant was aware that this was an "off the grid" remote location when she responded to his advertisement for this tenancy. He said that he attempted to assist her throughout this tenancy to the extent possible, even seeking out and purchasing a boat for her, when she lost access to the boat she was using. He maintained that the tenancy agreement made no mention of his responsibility for cellphone, internet or propane charges.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that the tenant has not substantiated her allegations that the landlord was responsible for the losses that she claims to have incurred during this tenancy. The landlord was clearly not responsible for providing cellphone or internet service for her, even though he did assist her with the eventual installation of the internet. He also

had no responsibility for the propane source of power for these remote premises, although he did at one point pay to ensure that she had this source of power and heat. The landlord also gave undisputed testimony regarding his provision of a boat for the tenant's use so that she would not find herself isolated either at the rental unit or prevented from accessing the rental unit.

While I am sympathetic to the difficulties that the tenant has encountered in her desire to live and work in this remote location, I find that the landlord should not bear the responsibility of compensating her for her inability to make these living arrangements work for her. There is little question that this proved to be a trying experience for the tenant. However, I find that she was well aware that she was moving to a location that was not served by any power grid and where she would be responsible for accessing her rental unit and keeping connected with the outside world. Although this was her application for a sizeable monetary award, she has not provided written evidence that I can consider in the form of receipts, bills or invoices to support her claim. She did not call any witnesses to attest to her losses, nor did she submit any written evidence from anyone else in support of her claim. Based on the very limited evidence she has provided by way of her sworn testimony, I find no basis to issue a monetary award against the landlord as she has not demonstrated that he was responsible for her losses arising out of this tenancy.

I dismiss the tenant's application for a monetary award without leave to reapply. As the tenant has been unsuccessful in her application, she bears responsibility for her own filing fees for her application.

### Conclusion

The tenant's application for a monetary award is dismissed without leave to reapply, as is the tenant's application to recover her filing fee.

I dismiss the tenant's application to recover her pet damage and security deposits as the February 20, 2013 decision of another Arbitrator has already addressed the landlord's application with respect to those deposits. I decline to consider the remainder of the tenant's claim as this tenancy has ended and the outcomes sought by the tenant are by now moot.

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 14, 2013

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Residential Tenancy Branch

