



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL; CNC; MNDC; FF

### **Introduction**

This is the Tenant's Application for Dispute Resolution seeking to cancel two Notices to End Tenancy compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearings.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by handing the documents to the Landlord on February 7, 2013, with a witness present. The Tenant testified that she did not serve the Landlord with copies of her documentary evidence, except for a letter dated February 6, 2013.

The Landlord's agent stated that the Landlord posted copies of his documentary evidence to the Tenant's door on February 27, 2013.

Documentary evidence is important and must be provided to the Residential Tenancy Branch and served upon the other party within the time frames set out in the Residential Tenancy Branch Policy guidelines. Neither party served the other within the Policy guidelines. Both parties wished to proceed with the Hearing and therefore, I invited them to give me their evidence orally.

### **Preliminary Matters**

At the outset of the Hearing, it was determined that the parties agreed that the tenancy would end on March 31, 2013, at 1:00 p.m. in accordance with the 2 month Notice to End Tenancy for Landlord's Use. Therefore, the Tenant's applications to cancel the Notices to End Tenancy were withdrawn. The Hearing continued with respect to the Tenant's application for compensation and to recover the cost of the filing fee.

### **Issue to be Decided**

Is the Tenant entitled to compensation for restricted services or utilities and for the Landlord failing to make repairs in a timely fashion?

### **Background and Evidence**

This tenancy began in May, 2012. Rent is \$400.00, due on the first day of each month. Rent included internet capabilities.

#### **The Tenant provided the following testimony:**

The Tenant stated that the Landlord refused to provide receipts for rent paid in cash.

The Tenant testified that the kitchen sink was not draining properly for 3 months of the tenancy and that after complaining to the Landlord multiple times, it was finally fixed at the end of November, 2012. The Tenant stated that during the time that the sink was blocked, she did not have use of it at all, which impacted her use of the kitchen and cost her money to eat out.

The Tenant testified that she was without a working internet connection for five weeks from the last week of November until the first of January, 2013.

The Tenant stated that she was without a working smoke alarm for one week. She stated that the smoke alarm was constantly beeping so the Landlord's agent disassembled it and left exposed wires. She stated that the Landlord's agent entered the rental unit without her knowledge or consent and fixed the alarm.

The Tenant seeks total compensation in the amount of **\$2,000.00**.

#### **The Landlord and her agent provided the following testimony:**

The Landlord agreed that she did not issue receipts for rent paid in cash.

The Landlord stated that the Tenant first told her about the blocked sink in October, 2012 and that it was fixed in November. Therefore, the Landlord submitted the Tenant was without a working sink for only one month.

The Landlord's agent stated that the Landlord changed internet providers in order to save money, but the Tenant complained that the new service was substandard so the Landlord changed it back. The Landlord's agent stated that the internet capability was always there and that the Landlord only changed it back to please the Tenant, which was an additional expense to the Landlord.

The Landlord's agent acknowledged that the Landlord did not give 24 hour written notice to fix the smoke alarm, but stated that the Tenant gave the Landlord permission by text message to enter the rental unit and fix the smoke alarm.

### **Analysis**

Section 26(2) of the Act requires landlords to provide receipts for rent paid in cash. The Tenant paid monthly rent in cash. I hereby **Order the Landlord to provide the Tenant with receipts for all rent paid during the tenancy.**

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities. To prove a loss and have the respondent pay for the loss requires the applicant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant provided insufficient evidence of the amount of time that she was without a working sink, or proof of the amount that it cost her to eat out while the sink was not working. However, the Landlord agreed that the sink was not working for one month. I find that the Landlord did not act in a reasonably timely manner to fix the Tenant's sink. Section 32 of the Act requires a landlord to provide and maintain a rental unit in a manner that complies with the health, safety and housing standards required by law. I find that the Landlord did not comply with Section 32 of the Act with respect to the kitchen sink and that the value of the tenancy was affected by the Landlord's non-compliance. Therefore I provide the Tenant with compensation in the amount of **\$100.00** for this portion of her claim (1/4 of the value of the tenancy for one month).

I find that the Tenant provided no evidence that her internet connection was insufficient and therefore, I dismiss this portion of her claim.

I also find that the Tenant failed to provide sufficient evidence of the amount of time that she was without a working smoke alarm or that she suffered a loss as a result of not having a working smoke alarm. Therefore this portion of her claim is also dismissed.

The Tenant has been partially successful in her application and therefore I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

### **Conclusion**

The Tenant's application to cancel the two Notices to End Tenancy is withdrawn. The parties agree that **the tenancy will end on March 31, 2012, in accordance with the 2 Month Notice to End Tenancy for Landlord's Use.**

I hereby **Order the Landlord to provide the Tenant with receipts for all rent paid during the tenancy.**

I find that the Tenant has established a monetary award in the total amount of \$150.00. I hereby provide the Tenant with a Monetary Order in the amount of **\$150.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

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 08, 2013

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Residential Tenancy Branch

