



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNDC, RR, FF

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; or an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord did not call his witness into the hearing. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for Money Owed or compensation for damage or loss?
- Is the tenant permitted to reduce rent for repairs, services or facilities agreed upon but not provided?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep the tenants security and pet deposit?

Background and Evidence

The parties agree that this tenancy started on April 01, 2011. This was a verbal agreement between the parties for the tenant to rent this unit for \$1,500.00 per month. Rent was lowered to \$1,400.00 per month on January 01, 2013 to take into account utilities for the lower unit. The tenant paid a security deposit of \$750.00 and a pet deposit of \$750.00 at the start of the tenancy.

**The landlord's application**

The landlord testifies that the tenant failed to pay rent for February, 2013 of \$1,400.00. The tenant was served in person with a 10 Day Notice to End Tenancy on February 02, 2013. The landlord agrees that the 10 Day Notice shows rent outstanding of \$1,500.00. The landlord agrees the rent was lowered in January to take account of extra utilities being used by the tenants living downstairs. The landlord testifies that the 10 Day Notice would be effective on February 12, 2013 if the tenant failed to pay the outstanding rent within five days. The landlord testifies that the tenant did not pay the outstanding rent and moved from the rental unit on March 18, 2013. The landlord seeks an Order to keep the tenants security and pet deposit in satisfaction of the outstanding rent and the \$50.00 filing fee.

The tenant agrees that rent for February was not paid to the landlord. The tenant testifies that the rent was withheld as the landlord's agent turned up to serve the tenant with a One Month eviction notice. The tenant testifies that the landlord's agent said that they would not serve the Notice as the landlord did not want the tenants to leave. The tenant testifies that they discussed the repairs that were needed to the unit and the landlord's agent said she would speak to the landlord about the repairs. The tenant testifies that they had found another rental unit at that time but did not take it as the landlord wanted them to stay. The tenant testifies that later the landlord served the tenant with a 10 Day Notice and another One Month Notice. The tenant testifies that by this time they had lost the other rental unit. The tenant testifies that with this and the concerns about repairs not completed the tenant withheld February's rent in compensation.

### **The tenant's application**

The tenant testifies that the landlord had never provided an address for the tenant to write to the landlord to inform the landlord of repair issues in the rental unit. The tenant testifies that the first address they had for the landlord was with the landlord's application for Dispute Resolution.

The tenant testifies that there were problems with the electrical system in the unit. The tenant testifies that the bulbs in the unit kept blowing. The tenant testifies that they spent over \$612.00 on bulbs but due to the electrical problems in the unit the bulbs would blow again. The tenant testifies that they spoke to BC Hydro and were told that not enough power is going to the property which causes power surges which burn out the bulbs. The tenant testifies that the landlord was informed and the landlord said he would get a friend in to look at the problem. However this friend of the landlord kept making excuses over the following seven months and never came to look at the issues with the electrical system. The tenant testifies that they spoke to the landlord again and the landlord told the tenants they could get their own electrician in and the tenant testifies that at that time the tenant agreed to pay for this as the tenant had concerns about their safety.

The tenant testifies that their electrician came to the unit and told the tenant that the wires had not been connected properly. The tenant seeks to recover the sum of \$612.00 for the light bulbs purchased by the tenant. No receipts have been provided in evidence. Two electrical outlets had burnt out and caught fire. The tenant testifies that she sent the landlord a text message and called the landlord. The tenant testifies that this repair was treated as an emergency repair and the tenant had to pay an electrician the sum of \$198.78 for parts and labour. The tenant testifies that she was unable to send the landlord a copy of the invoice as the tenant did not have an address for the landlord. The tenant has provided a hand written invoice from the electrician in evidence.

The tenant testifies that the sink in the unit would not drain properly. The tenant called the landlord and was advised to put Drano down the sink. The tenant testifies that this did not remove any blockage and the tenant brought in a plumber on two occasions to take the pipes apart to see what the problem was. The plumber also tightened the sink screws that were loose and cleaned all the pipes. The tenant testifies that as this plumber was a friend the tenant was not charged for the first visit but was charged for the second visit to the sum of \$48.25. No invoice has been provided in evidence.

The tenant testifies that there was a problem with the drainage in the back yard. The water from the neighbouring property would drain into the yard causing the yard to become very wet and soggy. The tenant testifies that the landlord agreed to pay \$500.00 to remedy this problem. The total bill was \$1,150.00 and the landlord paid \$500.00 while the tenant testifies that they paid the balance of \$650.00. The tenant seeks to recover the amount paid by the tenant as the tenant states this cost should not be the tenant's responsibility. The tenant testifies that the contractor who came to do this work did not clean up or remove the dirt after the drainage work was done. The tenant has provided an invoice in evidence for the sum of \$499.52. This invoice documents that the work carried out was to install drains. No other invoice has been provided in evidence for any other amounts paid.

The tenant testifies that when they rented the unit the garage was part of the verbal rental agreement. The tenant testifies that the landlord continued to store his belongings in the garage for six months and the tenant had to rent a trailer from the tenant's boyfriend's father to store their belongings in. The tenant testifies that they paid \$50.00 a month for this storage and seek to recover the sum of \$300.00 from the landlord as a reduction in rent for the six months they could not use the garage. The tenant has not provided an invoice for the storage costs or any evidence that this storage was used.

The tenant testifies that they had to purchase boxes to pack the landlords belongings so the landlord could remove his belongings from the garage. The tenant seeks to recover the sum of \$160.00 for the boxes. The tenant has not provided an invoice for the boxes. The tenant testifies that they agreed to take some of the landlords items to the dump and the landlord agreed to pay any dump fees. The tenant testifies that they removed a large table, books, an old chair and other heavy items. The tenant testifies that there was a trailer full of the landlord's items for the dump and the tenant seeks to recover the sum of \$40.00. No receipt for the dump has been provided in evidence.

The tenant testifies that they had to clean the blocked gutters twice for the landlord by pressure washing them. This was done to prevent water puddling and to prevent ice blocking the gutters. The tenant testifies that they called two companies for quotes for this work and have based their claim on these quotes. The tenant seeks to recover the sum of \$200.00 for this work. The tenant has not provided any quotes in evidence.

The tenant testifies that they had to pressure wash the house stairs as the stairs were slimy and slippery because the wood had not been treated. The tenant testifies that while they did this work they also pressure washed the house and the carport area. The tenant testifies that they borrowed a pressure washer but seeks to recover \$150.00 for their time to do this work.

The tenant testifies that when they rented the unit the master bathroom had a Jacuzzi tub. For the first six months the tenant could not use the master bathroom as it was

used for storage of the tenant's belongings as they could not use the garage. The tenant testifies that after this time period the tenant found that the tub leaked into the pot lights downstairs in the kitchen. The tenant testifies that she notified the landlord by text message and phone and the landlord told the tenant not to use the tub. The tenant seeks to recover the sum of \$25.00 a month for 23 months of the tenancy that the tub could not be used to a sum of \$575.00. The tenant states that they paid a higher rent in order to get these extra luxuries.

The tenant testifies that they could not use the master bathroom shower for the last 18 months of the tenancy as this also started to leak into the pot lights below. The tenant seeks to recover the sum of \$25.00 a month for 18 months the shower could not be used to a sum of \$450.00. The tenant testifies that the landlord told the tenant that the unit had two other bathrooms so it was not a big deal to not be able to use the master bedroom on suite. The tenant testifies that in the last 10 months of the tenancy they also lost the use of one of the other bathrooms due to electrical problems. The tenant seeks to recover the sum of \$25.00 a month for 10 months to the sum of \$250.00. The tenant testifies that they then had only the use of the downstairs bathroom.

The tenant testifies that there was conflict between the downstairs tenant and the upper tenants. The tenant testifies that the downstairs tenant had the mailbox key and would not give the tenant the mail regularly. The tenant testifies that the landlord was informed and told the tenant to go to Canada Post and get a new mail box lock and key. The tenant testifies that this cost the sum of \$35.00 and the tenant seeks to recover this from the landlord. No receipt from Canada Post has been provided in evidence.

The tenant testifies that the City inspectors came to look at the unit and did an inspection walkthrough of the unit. The tenant testifies that she pointed out all the issues they had been having with the electrical and plumbing and the City inspectors sent a report to the landlord. The tenant testifies that she has not had sight of that report as she is not the home owner.

The tenant also seeks to recover the \$50.00 filing fee from the landlord.

The landlord disputes the tenants claim for an electrician. The landlord testifies that the tenant had the landlords address but never sent the landlord a copy of the receipt.

The landlord disputes the tenants claim for a plumber. The landlord testifies that he had sent a plumber out to and the plumber could not find a leak. The landlord testifies that he has never had any problems with the sink and states the tenant has not sent the landlord an invoice for this work or provided one in evidence. The landlord agrees that the tenant informed him about the leaking shower but states he was not informed about the Jacuzzi. The landlord testifies that he had asked a friend to go to the unit to look at the shower but that person ended up in hospital and never went to the unit. The landlord testifies that he was not made aware of any problems with the other upstairs bathroom.

The landlord disputes the tenants claim for light bulbs. The landlord testifies that he had been informed that the tenant had plugged in an excessive number of heaters which would have overloaded the circuit. The landlord testifies that the tenant has never informed the landlord of any issues with the light bulbs burning out or about issues with an outlet in the bathroom.

The landlord disputes the tenants claim for the drainage. The landlord testifies that he had agreed to pay the sum of \$500.00 to rectify any drainage issues. The landlord testifies that the tenant did not inform the landlord that this cost would be higher than \$500.00 and the tenant has not provided any invoices or receipts to show that the cost was higher than the \$500.00 paid by the landlord.

The landlord disputes the tenants claim for storage costs. The landlord testifies that the garage was not part of the rental agreement at the start of the tenancy as the landlord used the garage to store his belongings. The landlord agrees that later on in the tenancy he decided to remove his belongings and give the tenants the garage to use. The landlord disputes the tenants claim for packing and for the cost of boxes. The

landlord testifies that he moved his own belongings from the garage. The landlord also disputes the tenants claim for dump fees and testifies that he did not ask the tenant to take any of his belongings to the dump.

The landlord agrees he has been sent a report from the City. The landlord testifies that the report mentions an electrical fail in the basement and garage. The landlord testifies that prior to receiving this report from the City the landlord was not aware of any electrical problems in the property. The landlord testifies that the report does not mention any plumbing issues but does mention water leaking into the light fixtures.

The landlord was asked to send in a copy of the City inspection report after the hearing had concluded. The tenant was asked to provide invoices or receipts for monies claimed after the hearing had concluded. The parties were advised that only the requested additional evidence will be considered.

### Analysis

#### **The landlords claim**

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant does not dispute that she withheld rent for February, 2013. The parties agreed at the hearing that rent had been reduced in January, 2013 to \$1,400.00; therefore it is my decision that the landlord has established a claim for unpaid rent of **\$1,400.00** and the landlords claim has been adjusted accordingly.

The landlord is therefore entitled to keep part of the tenant's security and pet deposit to the sum of **\$1,400.00** pursuant to s. 38(4)(b) of the Act. The balance of the security deposit to the amount of **\$100.00** must be returned to the tenant.



### **The tenants claim**

The tenant seeks a Monetary Order for money owed or compensation for damage or loss. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

1. Proof that the damage or loss exists;
2. Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
4. Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have reviewed the evidence before me including the additional evidence I requested from the parties after the hearing had concluded. I am not satisfied that the tenant was unable to contact the landlord as the tenant had a telephone number for the landlord and could have requested the landlords address if the tenant did not have this information at the start of the tenancy. The landlord has provided the report from the city that indicates that an electrical inspection was carried out on January 31, 2013. A number of non compliant electrical issues were found and need to be addressed by a registered electrical contractor with a permit by March 04, 2013. The issues found are, but are not limited to, labeling of electrical panels; fillers required in electrical panel in the garage; repair light switch in upper bathroom; check and repair all kitchen counter outlets; ensure no water is leaking in to the light fixture on the main floor. In light of this

report from the City it is my decision that the rental unit was experiencing some electrical issues and I therefore find it reasonable for the landlord to pay for any electrical work done by the tenant's electrician. I therefore award the tenant the sum of **\$198.78** for this work. However as the tenant has not provided any receipts for light bulbs I am unable to award the tenant any costs as the tenant has not met the burden of proof as to the actual amount spent on light bulbs above and beyond what would be normal expenditure for a tenancy of two years. Consequently the tenants claim for \$612.00 is dismissed.

With regard to the tenants claim for \$48.25 for the cost for a plumber; the tenant has provided insufficient evidence to show that there was an issue with the plumbing at the kitchen sink or the actual costs incurred. Consequently I find the tenant has failed to meet parts 1, 2, or 3 of the test for damage or loss claims and this section of the tenants claim is dismissed.

With regard to the tenants claim for costs incurred for the drainage in the back yard; the parties agree that the landlord paid \$500.00 for this work. The invoice provided by the tenant in evidence is for \$499. 52. The tenant has provided other documentary evidence in lieu of invoices but this evidence does not show how much extra the tenant paid or what the verbal agreement was between the landlord and tenant regarding this work. Consequently I find the tenant has failed to meet part 3 of the test for damage or loss claims and this section of the tenants claim is dismissed.

In regards to the tenants' position that there was a verbal agreement for the tenant to use the garage, I note that section 1 of the *Act, Definitions*, does not exclude verbal terms and in fact it defines "tenancy agreement" as follows:

*"tenancy agreement"* means an agreement, **whether written or oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities...."

However, on the subject of whether or not terms of a tenancy agreement can be enforced, Section 6(3) of the Act states: A term of a tenancy agreement is not enforceable if:

- the term is inconsistent with this *Act* or the regulations,
- the term is unconscionable, or
- **The term is not expressed in a manner that clearly communicates the rights and obligations under it.** (my emphasis)

By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. I am not prepared to find that the garage was included in the tenancy agreement until later on in the tenancy after the landlord had removed his belongings. Consequently I find the tenant has not met the burden of proof that the garage was include and the tenants claim for compensation for storage costs cannot be upheld and is dismissed.

With regard to the tenants claim for packing boxes and the removal of the landlord's belongings to the dump; the tenant has insufficient corroborating evidence to show that the landlord asked the tenant to purchase packing boxes or of the actual costs incurred for the boxes. The tenant also has insufficient evidence to show that the landlord asked the tenant to remove any of the landlords belongs and to take these to the dump. The tenant has no corroborating evidence to support a claim for \$160.00 for boxes or \$40.00 for dump fees. When it is one person's word against that of the other then the burden of proof is not met and this section of the tenants claim is therefore dismissed.

With regard to the tenants claim for of \$200.00 for clearing the gutters; the landlord disputes the tenants claim in this matter and I have no evidence from the tenant that the tenant attempted to mitigate this by contacting the landlord and requesting the landlord to carry out this maintenance work on the gutters. Consequently I find the tenant has not met part 4 of the test for damage or loss claims and this section is also dismissed.

With regard to the tenants claim for \$150.00 for pressure washing the house, steps or carport; there is no evidence from the tenant to show that the landlord was contacted about the steps or that the house and carport required pressure washing. Consequently the tenant has failed to meet part 1 of the test for damage or loss claims and this section of the tenants claim is dismissed.

With regard to the tenants claim for compensation for the loss of the Jacuzzi tub for 25 months, loss of the master bathroom shower of 18 months and loss of the second bathroom for 10 months; When a problem such as the ones described by the tenant occur in a rental unit a tenant must inform the landlord in a timely manner and request the landlord to make repairs. If the landlord fails to make any required repairs a tenant's recourse would be to consider the repairs under s. 32 of the *Act* which deals with the landlord's obligation to maintain a rental unit. The tenant's next recourse would be to file an application for Dispute Resolution to obtain an Order for the landlord to make emergency or other repairs. A tenant should not simply ignore the matter and then claim compensation at the end of the tenancy. A tenant is required to act in a timely manner to mitigate any loss of use of these areas.

Having considered the testimony of both parties it is my decision that the tenant did inform the landlord about a leak in the shower but there is insufficient evidence to show that the tenant informed the landlord of any further problems with the Jacuzzi tub or problems preventing the use of the second bathroom. Therefore I find the tenant did not act in a reasonable manner by ensuring these deficient matters were brought to the landlord's attention or to obtain an Order through Dispute Resolution for the landlord to carry out repairs. I further find the tenant has provided no corroborating evidence to prove that the Jacuzzi tub, the shower or the second bathroom could not be used for the periods of time claimed particularly as the tenant mentioned that they were paying a high rent for this home with these facilities yet the tenant continually did little about the alleged loss of these facilities throughout the tenancy. Consequently I find the tenants claim for compensation must be limited to the amount of **\$200.00** for the loss of the shower in the master bathroom for an unproven period

With regard to the tenants claim for \$35.00 for a mail box key and lock; the landlord does not dispute this section of the tenants claim; therefore I find the tenant is entitled to recover the sum of **\$35.00** for the mail box key and lock.

As the parties have both had some success with their respective claims I find that both parties must bear the cost of filing their own applications.

A Monetary Order has been issued to the tenant for the following amount:

<b>Landlords claim</b>	
Security and pet deposit	\$1,500.00
Less unpaid rent	(-\$1,400.00)
<b>Tenants claim</b>	
Balance left from the security and pet deposits	\$100.00
Compensation for loss of the shower	\$200.00
Money owed for mail box key	\$35.00
Costs for electrician	\$198.78
<b>Total amount due to the tenant</b>	<b>\$533.78</b>

### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. The landlord may keep the sum of **\$1,400.00** from the tenant's security deposit.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$533.78**. The order must be served on the landlord and is enforceable through the Provincial Court 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 20, 2013

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Residential Tenancy Branch

