



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, PSF, O

### Introduction

This matter dealt with an application by the Tenant for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to provide services and facilities and for other considerations.

The Tenant said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery on February 10, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is there a loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?
3. Did the Landlord provide services and facilities required under the Act, regulations or tenancy agreement?
4. What other considerations are there?

### Background and Evidence

This tenancy started on June 14, 2010 as a fixed term tenancy for 6 months and then continued on a month to month basis. Rent was \$1,000.00 per month payable on the 14<sup>th</sup> day of each month. The Tenant paid a security deposit of \$500.00 on June 14, 2010.

The Tenant said there was a flood in her basement unit on December 2, 2012. The Tenant said she told the Landlord immediately and the Landlord came over and looked into the flooding issue on the same day. The Tenant continued to say the flooding continued and the Landlord realized it was a major emergency repair issue so the Landlord issued an Emergency Repair Notice to Vacate the unit on December 6, 2012.

The Tenant said she moved out of the rental unit on December 10, 2012 as a result of the flood and the notice to vacate the unit. The Tenant said she has made the following application to recover her costs and the expenses that she incurred because of being moved out of the rental unit.

The Tenant said she is claiming the following:

1. Room and Board at a friend's house	\$750.00
From December 10 to 25, 2012 @ \$50.00/day	
2. Moving costs to move her belongings to a storage unit on December 10, 2012.	\$320.00
3. Storage costs from December 10 to 31, 2012	\$410.30
4. Accommodation from December 25 to 31, 2012	\$391.86
5. U Haul moving costs	\$113.97
6. Gas costs	\$100.00
Total	\$2,086.13

The Tenant said these were her out of pocket expenses caused by the flooding of her rental unit and the Tenant said she has provided into evidence copies of the receipts to prove that the expenses were paid by her.

The Landlord said the flooding was caused by the drainage tiles breaking. She said it was a natural disaster so no one is at fault. The Landlord continued to say that she signed an agreement with the Tenant regarding the flooding and the Tenant moving out while repairs could be done. This agreement indicated that the Tenant would move out in 48 hours, that the Landlord would return \$500.00 of rent representing November to December 14, 2012 rent, the Tenant's security deposit would be held so the Tenant could move back into the unit when repairs were completed and the December 14, 2012 to January 14, 2013 rent would be waived. The Landlord agreed the agreement did not cover any costs that the Tenant incurred because she had to move out of the rental unit. The Landlord did say that it was her understanding the \$500.00 was paid to help the Tenant move her things out of the unit. The Tenant said the \$500.00 was only to cover the return of rent from December 2 to December 14, 2012, because she did not have full use of the rental unit. The Landlord continued to say that she returned the Tenant's security deposit of \$500.00 on December 21, 2012, because they could not determine when the repairs would be completed and the tenancy was over.

The Landlord continued to say that the U Haul and gas expenses are normal moving expenses that any tenant has to pay when changing rental unit, so the Landlord should not be responsible for these expenses. As well the Landlord said that because this was an act of nature and everyone lost the Landlord should not be responsible for the Tenant's expenses.

The Tenant said that this was a good tenancy and she is only claiming for the expenses that she incurred because she could not live in her rental unit because of the flood and because the Landlord gave her an Emergency Repair Notice to Vacate. The Tenant said she paid for all the expenses and she submitted receipts as prove of the expenses.

### Analysis

#### **Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

I accept the testimony and evidence of both the Tenant and the Landlord that because of flooding issues in the rental unit the Tenant was required to move out. Even though the Landlord said that the flooding was an act of nature I find that the failure of the drainage system in the rental unit /complex was the cause of the Tenant moving out of the rental unit. At the time the flooding started the Landlord was no longer providing the services and facilities that the tenancy agreement stated; therefore I find the Landlord is responsible for the Tenant's losses.

The Tenant has proven losses existed and she has verified the losses by providing receipts for the claims that the Tenant has made. I accept the Tenant's testimony and evidence that these damages and losses were caused by the Landlord's inability to provide services and facilities which the Landlord was contracted to do under the tenancy agreement. The Tenant found permanent rental accommodation on January 1, 2013 which shows the Tenant minimized her losses in a reasonable way. The Tenant's costs and expenses are reasonable amounts to have paid to remove belongings and to have alternative accommodations during the transition period of December 10, 2012 to December 31, 2012. I find the Tenant has established grounds to be awarded room

and board in the amount of \$750.00, alternative accommodation of \$391.86, moving costs of \$320.00 and storage fees of \$410.30 for a total of \$1,872.18.

I also accept the Landlord's testimony that the Tenant's claim for the U-Haul of \$113.97 and the gas for moving of \$100.00 are both normal moving costs when a tenant moves from one rental unit to another rental unit. Consequently I dismiss the U-Haul and gas claims made by the Tenant.

As the Tenant has been successful in this matter, the Tenant will receive a monetary order for the balance owing as following:

Room and board:	\$ 750.00
Alternative accommodation	\$ 391.86
Moving costs to storage	\$ 320.00
Storage costs	\$ 410.30
Subtotal:	\$1,872.18

Further I accept the Tenant's testimony and evidence in the agreement dated December 6, 2012 that the Landlord returned \$500.00 as compensation for rent from December 2, to December 14, 2012 and it was not meant as compensation for the Tenants inconvenience of moving out of the rental unit.

In addition I find that the Landlord has returned the Tenant's security deposit of \$500.00 as the Landlord has not made any claim for damages against it therefore the security deposit is not at issue.

Conclusion

A Monetary Order in the amount of \$1,872.18 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: May 01, 2013

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Residential Tenancy Branch

