



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, OLC, MNDC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make repairs to the rental unit, for an order requiring the landlord to comply with the Act, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenant as noted above appeared; the landlord did not appear.

The tenant testified that they served the landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail on July 12, 2013. The tenant supplied the receipt containing the tracking number of the registered mail.

I questioned the tenant concerning the address he used for service of his hearing documents as there was no address listed on the tenancy agreement for the landlord. The tenant stated that he used the address found on email communication and bank records, which was also the same address used to serve the landlord for two previous dispute resolution hearings, attended by the landlord's agent.

I find the landlord was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-The tenant said that the tenants were vacating the rental unit at the end of the month, and therefore it was no longer necessary to consider the tenants' request to order the landlord to make repairs or to comply with the Act.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation and to recover the filing fee?

### Background and Evidence

The undisputed evidence shows that this tenancy began on September 1, 2012, monthly rent is \$1675, and the tenants paid a security deposit of \$837.50 at the beginning of the tenancy.

These parties have been in two previous dispute resolution hearings, the first one being conducted on April 30, 2013, on the tenants' application seeking the landlord's compliance with the Residential Tenancy Act and the tenancy agreement. The decision of May 22, 2013, by another Arbitrator following that hearing issued orders to the landlord for compliance with the Act and the tenancy agreement and cancellation of a rent increase.

Another hearing was conducted on June 13, 2013, on the tenants' application to cancel two separate Notices to the end the tenancy and for orders requiring the landlord to comply with the Act, for monetary compensation and for an order requiring the landlord to make repairs to the rental unit.

The Arbitrator in that hearing severed the tenants' application in order to deal only with the tenants' request to cancel or set aside the Notices to end the tenancy and dismissed the balance of their application with leave to reapply.

The Arbitrator, in her Decision of June 13, 2013, granted the tenants' application, dismissed the landlords' Notices, and further found the attending landlord's agent to be evasive and lacking in credibility.

In their present application, the tenants have made a monetary claim of \$4960.13, as follows:

|   |           |
|---|-----------|
| Insufficient hot water                          | \$1130.67 |
| Unfixed plumbing                                | \$167.50  |
| Aggressive behaviour by landlord                | \$350     |
| Trespassing/inadequate repair                   | \$300     |
| Loss of quiet enjoyment                         | \$2010    |
| Compensation for vexatious landlord's behaviour | \$702     |
| Ordered by landlord to clean contractor's trash | \$300     |

In support of his application, the tenant provided the following undisputed evidence.

*Insufficient hot water*-The tenant said that since the beginning of the tenancy, the tenants had issues with the lack of hot water. The tenant said that they brought this matter to the landlord's attention and that the landlord failed to address the problem. Specifically, the tenant stated that there was no hot water from the bathtub tap and therefore it was necessary to fill the tub with hot water from the sink tap.

The tenant contended that the lack of hot water caused a devaluation of the tenancy of 7.5% over the life of the tenancy. I must note that the tenants' claim was compiled in May 2013, at which time the claim was for the 9 months of the tenancy at that point.

*Unfixed plumbing*-The tenant said that the sink was leaking for two months, and that the landlord finally did make that repair, the only repair made during the tenancy. The tenant claimed that they suffered a devaluation of the tenancy of 5% for two months, or \$167.50.

*Aggressive behaviour by landlord*-The tenant stated that he is entitled to compensation due to the landlord repeatedly attempting to have the tenants buy tools to fix the yard. The tenant contended that they suffered a loss of quiet enjoyment due to the vexatious behaviour of the landlord.

*Trespassing/inadequate repair*-The tenant contended that they are entitled to compensation as the 1<sup>st</sup> and 2<sup>nd</sup> washer and dryer units supplied by the landlord were inadequate and failed to work properly. The tenant said he believed one of the landlord's contractors placed foreign objects in the dryer and that the compensation was due for a loss of quiet enjoyment.

*Loss of quiet enjoyment*-The tenant submitted that in approximately the third month of the tenancy, the landlord caused a devaluation of the tenancy by depriving them of their

right to quiet enjoyment. Specifically the landlord attempted to force the tenants to put the utility bills in their name and split the bill with the lower tenants. This issue was addressed in the tenants' first dispute resolution hearing.

Additionally, the landlord began asking for more utility costs other than the agreed upon amount,

The landlord also sought to illegally evict the tenants because they did not agree to put the utility bills in their names or to pay increased utility costs. The attempted evictions were addressed in the second dispute resolution hearing.

The tenant contended that the landlord's coercive and aggressive behaviour towards them throughout most of the tenancy, and the failure to repair caused a loss of quiet enjoyment and a resulting devaluation of the tenancy.

*Compensation for vexatious landlord's behaviour*-The tenant submitted that the landlord continued to make attempts to illegally collect for unpaid utilities and when that failed, the landlord issued an invalid notice to end the tenancy for that reason, which caused further anxiety and a loss of quiet enjoyment.

*Ordered by landlord to clean contractor's trash*-The tenant submitted that the landlord required the tenants to clean the debris and garbage left by the landlord's contractors.

In a general explanation, the tenant submitted that there trying and difficult circumstances living in the rental unit due to the landlord's behaviour, in attempting to illegally collect utilities the tenants were not required to pay, having strangers come in and out of the rental unit repeatedly, having difficulty with the landlord due to the landlord not following their requirements under the Act in making repairs or providing quiet enjoyment of the rental unit, making illegal attempts to end the tenancy because the tenants refused the landlord's demands, and in being evasive with the tenants.

The tenant's relevant documentary evidence included the two previous dispute resolution Decisions and an extensive amount of email communication between the parties.

### Analysis

Based upon the tenants' undisputed oral and written relevant evidence and a balance of probabilities, I find as follows:

*Insufficient hot water*-I find that the tenant's request for 7.5% loss of value per month due to one of the bathtubs not having a source of hot water for the entire tenancy to be reasonable. The tenant provided evidence which was undisputed by the landlord that a request for the repair had been made and not attended to. I therefore grant the tenants monetary compensation for the loss of use of one of the bathtubs for the entire tenancy in the amount of \$1507.56, comprised of 12 months of the tenancy at the time of the hearing x 7.5% loss of value (\$1675 per month x 7.5% = \$125.63 x 12 months).

*Unfixed plumbing*-I find that the tenant established that the rental unit had a leaking sink, the repair of which was not addressed by the landlord in a timely manner; however I do not find that a leaking sink is sufficient to award the tenants a devaluation of the tenancy in the amount of 5%.

I find that an award of \$50, or \$25 per month for the two months, to be a reasonable amount and I grant the tenants compensation in that amount.

*Loss of quiet enjoyment*-As to the remaining individual claims of the tenants as noted above, I find that these issues are all interrelated to the tenants' assertions that the landlord deprived them of their rights to quiet enjoyment of the rental unit and I therefore have considered them in totality rather than on an individual basis.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Additionally the arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises.

In reviewing the undisputed oral and written evidence, I accept that the landlord failed to provide the tenants with their rights to quiet enjoyment. In reaching this conclusion, I relied on one of the previous dispute resolution Decisions, dated May 22, 2013, in which another Arbitrator found that the landlord had attempted to force the tenants to place the utilities in their name and collect the other tenants' portion from those tenants, which

was found to be an unconscionable bid by the landlord, and to illegally increase the rent.

I do not consider the matter of the tenants' request now for compensation to be excluded through the legal principle of res judicata as the tenants had not applied for compensation in that application. I do find that these attempts by the landlord, in violation of the Act, caused the tenants to suffer a loss of quiet enjoyment.

I also looked to the Decision of May 22, 2013, in which the other Arbitrator ordered that the landlord provide the tenants with the proper 24 hour written notice prior to entering the rental unit, with the tenant submitting evidence that the landlord failed to comply with the order.

I was further persuaded by the tenant's undisputed evidence that the landlord also required or attempted to have the tenants clean up after the contractor to cause a loss of their quiet enjoyment due to nuisance by the landlord.

I also was further persuaded by the tenant's undisputed evidence that the landlord again failed to give the tenants quiet enjoyment by demanding that the tenants purchase tools for the rental unit, for the benefit of the landlord.

In weighing all evidence, I find in totality that the tenants have proven that the landlord is unfamiliar with their obligations and requirements under the Residential Tenancy Act, and as a result, their actions as described above have caused the tenants a devaluation of the tenancy by the landlord depriving them of their rights to quiet enjoyment free from interference from the landlord.

I find a reasonable amount of compensation for such loss of quiet enjoyment to be \$200 per month for nine months, due to the tenant's contention that the behaviour of the landlord began in approximately the third month, for a total of \$1800 (\$200 x 9 months of the tenancy through the day of the hearing).

I award the tenants reimbursement of their filing fee of \$50.

Due to the above, I find the tenants are entitled to a total monetary award of \$3407.56, comprised of \$1507.56 for loss of one of the bathtubs for the entire tenancy, \$50 for the leaking sink, \$1800 for a loss of their quiet enjoyment, and the filing fee of \$50.

Conclusion

The tenants' application for monetary compensation is granted in part and I grant them a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award in the amount of \$3407.56, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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 applicants and the respondent.

Dated: September 06, 2013

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Residential Tenancy Branch

