



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DORSET REALTY GROUP CANADA LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 29, 2013, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Tenant be granted monetary compensation?

### Background and Evidence

The parties confirmed they entered into a fixed term tenancy that began on May 1, 2001 and switched to a month to month tenancy after April 30, 2012. Rent was payable on or before the first of each month which began at \$540.00 and changed as of May 1, 2013, to \$700.00 per month. The Tenant vacated the property by the end of August 2013 and both parties attended a move out inspection on September 3, 2013. The Tenant signed agreeing to deductions from the security deposit. The remaining security deposit was returned by cheque which has since been cashed by the Tenant.

The Tenant testified that he is seeking compensation of \$964.00 for the period of July 19, 2013 to August 31, 2013 which is a period that he alleges that he was not able to reside in the rental unit due to a water leak. He argued that he had paid rent to the end of August 2013, but felt he had to live in his car because of ongoing water leak issues.

The Tenant pointed to his evidence which was a letter he wrote the Landlord on August 25, 2013, about two water leaks which occurred in his unit. He stated that there were ongoing water leak issues during at least ten years of his thirteen year tenancy. Then in July 2013 he told the building manager that he would be going away for a couple of weeks. Upon his return on July 19, 2013, he found his suite smelled intensely of moist air and had mold which was caused by a water leak in the hot water line located in his bathroom. He estimates that the leak happened more than a day before he returned home because his apartment was filled with steam, condensation, and there was mold on the walls. The windows were difficult to open, the floor was spongy, and his metal curtain rod was rusty.

The Tenant stated that he called the building manager when he returned July 19, 2013, and requested that he fix the pipe. The manager did not attend right away so he started to clean up the mess. He also called the property manager and left her a message. When the building manager finally arrived he had a plumber with him. The Tenant indicated that he had to bail water out of a pail all week. On July 20, 2013 the building manager turned off the hot water until the next week. On July 26, 2013 the building manager returned and showed him the leak had stopped so he turned the hot water on again. The pipe started leaking again but nothing was done.

The Tenant argued that he returned to the apartment at the end of July 2013 and found another leak under the bathroom sink. He said that he found the rate of water coming out to be scary. He called the building manager again and when he arrived about 5:00 p.m. he asked the Tenant what he wanted him to do about the leak. He returned with a plumber named Mark at which time the Tenant asked if he could leave because he was late for an appointment. The building manager told him he could not leave. He left the plumber in his apartment and asked a neighbour to lock up after he left so he could go to his appointment.

The Tenant testified that he received a notice of inspection on August 6<sup>th</sup> 2013. He argued that through these last two months, no one was returning his calls after he had left numerous messages, which caused him concern in having to decide to move, because he lives on a fixed income. He had been living in his car so he gave his notice to end his tenancy on August 25, 2013 and he was completely moved out by August 30, 2013. He went back on August 31<sup>st</sup> and found that the locks had been changed. When

he returned September 3, 2013, for the inspection the locks were not locked and he was told by the building manager that there had been another water leak.

The Landlord testified that the rental unit is a bachelor suite located on the ground floor of a sixty plus year old building. As per her evidence, page 7, she received a call on her pager at 8:43 p.m. on July 19, 2013 indicating the Tenant had a water leak. Their building manager works Monday through Friday but carries a pager for after hour emergencies. She paged him but he was out at a dance so he did not answer her page immediately. When the building manager responded he informed her that he had not received a page from the Tenant and he had not spoken to the Tenant that day. The building manager called the plumber and attended the unit.

The Landlord pointed to item # 11 and #12 in her evidence which included invoices from the plumber visits. These invoices clearly indicate the issues involved pinhole leaks in the water pipes, which are very common in a building this old. The plumber's name was Chris not Mark, as noted on the invoice. The work involved clamping off the pin hole which is standard plumbing practise in these types of buildings. She argued that the Tenant's statement was unfounded because the building manager did not shut off the water because it would have shut off the water to the entire building. There are fourteen suites in this building and if they turned off the water they would be required to give prior notice to all the tenants. No notices were issued because the main water valve was never turned off as it would have been a huge inconvenience to all tenants..

Based on the reports she received, the property manager indicated that the bathroom was not flood from these pinhole leaks; rather, there was a puddle of water on the floor beside the toilet. She pointed to her pictures which clearly show the water pipes and the clamps used to stop the leaks.

While pointing out the pictures provided in her evidence, which were taken on August 7<sup>th</sup>, September 3<sup>rd</sup>, and September 4, 2013, she submitted that she believes the smells are the result of housekeeping issues. The pictures are proof that the unit was not regularly cleaned as they clearly show dust, dirt, scuff marks, and numerous stains and spills on kitchen and bathroom fixtures, and even inside cupboards and down doors. She also noted that there was no evidence of the presence of mold. She denies not returning calls, arguing she returned every call. She also argued the unit was never flooded as these were small pin holes as indicated on the plumbing receipts.

In closing, the Tenant confirmed that the photos were of his unit, except for the photo on at the bottom of page 17, as he argued that was not his kitchen table in that photo. He

also argued that the dates listed above the photos were not correct because he cleaned his unit for six hours at the end of his tenancy.

### Analysis

I have carefully considered all of the evidence before me and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenant has the burden to prove his unit suffered water damage to the extent that he could no longer reside in the unit and that the Landlord failed to respond in a timely manner. The only evidence before me from the Tenant was his verbal testimony and a letter he wrote to the Landlord. The Landlord disputed the Tenant's testimony. The Landlord's testimony was supported pager reports and the plumbing invoices which clearly indicate they repaired "pinhole" leaks. Accordingly, I find the Tenant provided insufficient evidence to prove he was not able to reside in his apartment for the period of July 19, 2013 to August 31, 2013, due to flooding or the presence of mold. Accordingly, I dismiss his application for compensation, without leave to reapply.

### Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: October 17, 2013

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Residential Tenancy Branch

