



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding One West Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. This hearing was conducted over two dates. On the first date the parties attempted to negotiate a settlement, but to no avail. During that hearing the parties agreed for an adjournment to ensure that the tenants' evidence was before me and the landlord. The matter resumed on this date until completion. All documentary, digital and testimonial evidence was present and considered in making a decision.

### Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The tenancy began on or about August 1, 2010 and ended on July 25, 2013. Rent in the amount of \$1575.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$787.50 and a pet deposit of \$787.50.

The tenant gave the following testimony:

The tenant stated that on July 1, 2013 she noticed water bubbles coming up from her floor boards. The tenant stated that due to the long weekend she decided to contact the landlord when his office was open. The tenant stated that she left a voicemail message for the owner on July 2, 2013. The tenant stated that on July 3, 2013 the landlord came to investigate. The tenant stated that on July 4, 2013 the restoration company came into the suite and started remediating the damage. The tenant stated she was forced to live in a hotel from July 4-20, 2013 as her unit was unlivable. The tenant stated that the landlord had promised to have the unit repaired within two weeks. The tenant stated that on July 15, 2013 she gave the landlord notice that she would be moving out by the end of the month. The tenant stated that the landlord was agreeable to this situation under the circumstances. The tenant is seeking the recovery of her hotel costs, some

meals, the higher than usual phone bill as she had to deal with the landlord and his insurance company, the higher than normal hydro bill as the restoration company ran heavy duty heat fans for five days, and the cost of packing and moving supplies for a total claim of \$1695.28.

The landlord gave the following testimony:

The landlord stated that a material term of the tenancy agreement was that the tenant was to purchase their own contents and liability insurance; but this tenant did not. The landlord stated that the security and pet deposits were returned to the tenant. The landlord stated that the tenant was initially charged rent for the month of July but was reimbursed in full and incurred no rental costs for July 2013. The landlord stated that he was agreeable to paying the hydro bill but disputes the balance of the tenants claim. The landlord stated that all possible means to accommodate the tenant were given. The landlord stated that the tenant had left a voice mail message on the evening of July 2, 2013 informing him of the leak. The landlord stated the tenant advised that the washing machine had been leaking since June 30, 2013 but because of the long weekend didn't call until July 2, 2013. The landlord stated steps were taken immediately the following morning to remediate the issue. The landlord stated that the in suite washing machine drain hose was the cause of the leak. The landlord stated that when the tenant last used the machine on June 30, 2013 the leak occurred but was not notified until the evening of July 2, 2013.

### Analysis

At the outset of the hearing the landlord stated that he agreed with the tenant recovering her hydro costs of \$24.86. Based on that acknowledgement I find that the tenant is entitled to \$24.86.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, regulation or tenancy agreement,
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.

In the case before me the tenant was unable to provide sufficient evidence that the landlord was negligent or in violation of the Act, regulation or the tenancy agreement. In addition, the tenant has a responsibility to minimize and mitigate any damage. When

asked what steps the tenant took, she stated "I couldn't really do much; I put some towels in front of the washer and hoped it would stop leaking". The tenant did not immediately notify the landlord or the emergency contact person. It is worth noting that the tenant acknowledged the requirement of having contents insurance as part of her tenancy agreement and stated that she had never obtained any during her entire tenancy.

I found that the landlord acted immediately and reasonable under the circumstances and was doing so in Accordance with the Act, regulations and the tenancy agreement. The tenant gave contradictory evidence at times and was unclear about some dates and facts. Based on all of the above and on the balance of probabilities I dismiss the remainder of the tenants' application.

As the tenant has only been partially successful I decline the recovery of the filing fee and she must bear that cost.

As for the monetary order, I find that the tenant has established a claim for \$24.86. I grant the tenant an order under section 67 for the balance due of \$24.86. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenant is granted a monetary order for \$24.86.

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 :January 30, 2014

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Residential Tenancy Branch

