



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREATER VANCOUVER HOUSING CORPORATION  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary order for damages or loss under the Act?

### Background and Evidence

The tenancy began in December 19, 1998. Rent in the amount of \$885.00 is payable on the first of each month. A security deposit of \$352.00 was paid by the **tenant**. The tenancy continues in accordance with the Act.

The tenant claims as follows:

a.	Water damage to personal belongings	
b.	Medical costs	
c.	Loss of wages	
d.	Loss of use of space	
	<b>Total claimed</b>	<b>\$6,612.09</b>

### Damages to personal belongings

The tenant testified on January 20, 2012, a pipe in the wall froze and as a result the pipe burst causing water to enter her rental unit. The tenant stated she was at work when this happened.

The tenant testified that her son contacted the emergency line and had a friend help lift their belonging off the floor. The tenant stated the landlord did not attend until the next day bringing fans and seven days later they made the necessary repair to the wall.

The tenant testified as a result of the flood her personal property was damaged. The tenant stated that because her belongings were so valuable she was unable to obtain tenant insurance, such a computer worth \$5,000.00. Filed in evidence are photographs of towels, a couch, a piano and a book.

The tenant testified she did not notify the landlord that her belongings were damaged in the flood because it was their responsibility to ask her.

The tenant testified that she has not submitted any receipts or any other document to support the value of her belongings. The tenant stated she did not place a value on each item and was merely guessing at the amount to be compensated.

The landlord's agent testified that on January 20, 2012, the tenant's son contacted the emergency line, informing them that a water pipe had burst and water was entering the rental unit. The agent stated this was caused by a frozen pipe that was located inside the exterior wall and froze due to the extreme cold weather.

The landlord's agent testified that they immediately responded on January 20, 2012 and the pipe was repaired by a plumber. The landlord stated they were unable to have the restoration company attend until the next morning and fans were installed.

The landlord testified that the tenant did not notify them at that time of the incident that there was any damage caused to any belongings and they did not see any damages. The landlord stated they did not hear anything further until two years later that the tenant was alleging such damages.

The landlord stated even if there was damage caused the tenant was required to have personal content insurance as they are not responsible for damage caused when it was caused by their actions.

### Medical costs and loss of work

The tenant testified that she seeks to recover medical costs, however, has no receipts of any expenses.

The tenant testified that she had to miss work for two days because she hurt her back moving her belongings. Filed in evidence is a copy of her employee attendance record.

The landlord's agent testified there is no evidence to support the tenant missed work or incurred any cost as a result of an injury.

### Loss of space

No evidence was heard.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the **tenant has** the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Residential Tenancy Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

### **Claims in Tort**

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

[Emphasis added]

### Damages to personal belongings

Where a rental unit is damaged by an unforeseen event, such as flooding as in this case, it is upon the landlord to repair the rental unit and residential property. Tenant's insurance generally covers damages or loss to the tenant's personal property and costs for temporary relocation.

In this circumstance the flood occurred as a result of extremely cold weather, which a pipe inside a wall froze and burst causing flooding to the rental unit. When the landlord was informed of the leak they immediately responded and the pipe was repaired and the restoration company attended the next day. I find the tenant has failed to prove the landlord was negligent in dealing with the leak once aware of it.

A landlord does not become a tenant's personal insurer when a tenant does not carry tenant's insurance. Damage to a tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

As I have found the landlord's action was not negligent, I find there is no violation of the Act. Therefore, I dismiss the tenant's claim for damages to personal belongings.

### Medical costs and loss of work

As I have found the landlord's actions were not negligent and there was no violation of the Act, I find the tenant is not entitled to any compensation for medical cost or loss of work. Further, there was no evidence to support any medical cost or medical injury. Therefore, I dismiss this portion of the tenant's claim.

Loss of space

As there was no evidence submitted on this issue, I dismiss this portion of the tenant claim.

Conclusion

In light of the above, I 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: May 14, 2014

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Residential Tenancy Branch

