



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MNSD, MNDC, MNR, FF  
For the tenant: MNDC, FF

### Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The tenant applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

This hearing began on April 7, 2014, and dealt only with the lack of particulars of each party in their application.

The parties were informed at the original hearing that the hearing would be adjourned in order for each party to provide the Residential Tenancy Branch ("RTB") and each other with their respective monetary order worksheets providing a breakdown of their monetary claim. The parties were also instructed to provide no further documentary evidence as the only evidence that would be considered would be that evidence submitted in advance of the first hearing.

This hearing proceeded on the parties' original applications for dispute resolution.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, 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.

Issue(s) to be Decided

1. Is the landlord entitled to monetary compensation and for recovery of the filing fee paid for this application?
2. Is the tenant entitled to monetary compensation and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence of the parties shows that this fixed term tenancy began on January 15, 2013, the fixed term was through February 28, 2014, monthly rent was \$1595, and the tenant paid a security deposit and a pet damage deposit of \$797.50 each at the beginning of the tenancy.

The tenancy actually ended on or about December 31, 2013, when the tenant vacated the rental unit.

The rental unit is the lower suite and other tenants of the landlord rent the upper suite. The landlord also has adjoining upper and lower suites, rented to other tenants.

***Landlord's application-***

The landlord's original monetary claim was \$4995, which was not broken down into specifics. The landlord amended her monetary claim, and she is now seeking the amount of \$914.14, comprised of loss of rent revenue for \$360.16, unpaid utilities of \$503.98, and the filing fee paid for this application for \$50.

The landlord's relevant documentary evidence included, but was not limited to, copies of utilities bills, the written tenancy agreement, the written tenancy agreement for the subsequent tenant of the rental unit, a written response to the tenant's monetary claim, email communication between the parties, and receipts for work performed on the rental unit.

In support of her application, the landlord submitted when she received the tenant's email of October 25, 2013, of her intent to vacate the rental unit by December 31, 2013, she began advertising the rental unit immediately.

The landlord submitted that she was diligent in her efforts; however, she was careful in the selection of the next tenants, so that they would be a proper fit for the tenants in the upper rental unit.

The landlord submitted that she was successful in obtaining a new tenant for January 8, 2014, and therefore the tenant should be responsible for her loss of rent revenue for January 1-7, 2014, as the tenant had signed a fixed term tenancy agreement.

The landlord submitted that the tenant told her to keep the security deposit and pet damage deposit in lieu of paying rent for December 2013, and that she has done so.

As to her request for unpaid utilities, the landlord submitted that the tenant is responsible for 1/3 of the total utilities which are shared with the tenants in the upper rental unit, as per the written tenancy agreement. The landlord submitted that the tenant paid utilities only up to August, and that she owes her portion of the unpaid utilities through December, as shown by the copies of the utilities bills provided.

***Tenant's response-***

In response, the tenant submitted that the landlord was not entitled to loss of rent revenue as the landlord had repeatedly informed her that she could leave at any time as she, the landlord, did want unhappy tenants.

The tenant further questioned the landlord's claim for loss of rent revenue for a rental unit determined to be illegal.

As to the unpaid utilities, the tenant submitted that she paid her bills on time, until new tenants moved into the upper rental unit and began using the air conditioner, at which time her unit became too cold. As such, the tenant did not need to use her air conditioner. The thermostat controls were located in the upper rental unit, so that she was not able to control the temperatures in her rental unit.

The tenant submitted that the landlord said she would charge the upper tenants more for their utilities.

The tenant submitted that she saw an increase of 45% in her portion of the utilities and that she would agree to paying \$75 per month for October, November and December, which is the amount the landlord said would be her average portion of utilities costs.

The landlord responded to the tenant's testimony, stating that the air conditioner worked the same as the heat, and that is by forced air, with the controls set at a constant 70-72 degrees. To make the tenant happy, the landlord had baseboard heating installed.

The tenant said that she first complained of baseboard heating in April, not August.

***Tenant's application-***

The tenant's monetary claim is \$3569.69, as follows:

Cleaning by tenant	\$630
Disturbance by contractors	\$797.50
Loss of heat/ 7 days	\$372.19
Loss of normal power use	\$797.50

Loss of food due to ants	\$145
Unreasonable disturbances	\$797.50
Bank fees	\$50
Filing fee	\$50

The tenant's relevant documentary evidence included, but was not limited to, email communication between the landlord and the subsequent tenant, an advertisement of the rental unit, email communication to the landlord addressing her concerns about the utilities bills, references to unidentified landlord-tenant material, an invoice prepared by the tenant for her cleaning of the rental unit. I note that the tenant provided what appeared to be a timeline of events, but the print was in less than 8 point font which is required of evidence, and I therefore have not considered this document.

*Cleaning by tenant*-The tenant submitted the contractors installing the baseboard heating had over 18 different cuts in the drywall, leaving all her personal property covered in drywall dust, as none of her property was covered by the contractors.

The tenant submitted that she was unable to contact the cleaner that the landlord agreed to have come clean the rental unit, and therefore she and her family cleaned the rental unit. The tenant submitted that her research shows that a professional cleaning company charged \$105 per hour, which is the amount she put on her invoice to the landlord.

In response, the landlord submitted that although the tenant implied that a major demolition occurred, the repairs were minor not lasting longer than a week, with a visit by an electrician on August 23, and then a painter on September 1. The landlord submitted further submitted that she and her husband were in the rental unit for two days cleaning and that the tenant was not home during this time, as she was away attending a baseball game.

The landlord offered to pay \$20 per hour, but not the rate a professional cleaning company charges.

*Disturbance by contractors*-The tenant submitted that she was entitled to 2 weeks monetary compensation due to disruptions from the contractors and unsuitable living conditions.

The landlord responded, stating that the period of any disruption was 7 days, not 2 weeks, and that the rental unit was still habitable and usable.

*Loss of heat/ 7 days*-The tenant submitted that for a period of 7 days in total between March 2 and April 4, she had no heat as the upper tenants were away, and that she was entitled to compensation at a daily rate for those days.

In response, the landlord submitted that she did not understand the claim, as she called the upper tenants when the tenant complained. The upper tenants said that they may have made a mistake.

The tenant stated that the landlord's response was to drop off heaters and that she, the tenant, had to use the oven for heat.

*Loss of normal power use*-The tenant submitted that the rental unit was not wired properly, causing an improper use of the appliances, causing wear and tear on her appliances. For instance the tenant and her family could not use more than one appliance at the time, according to the tenant.

The tenant contended that she was entitled to compensation equal to 1/24 value of her tenancy.

In response, the landlord submitted that she had an electrician attend to the tenant's complaints, and that the tenant could use the opposite electrical outlet.

*Loss of food due to ants*-The tenant submitted that there was an ongoing problem with ants, and that although she noticed ants in February, an exterminator was not called out until March. The tenant submitted that she lost food due to the ants.

In response, the landlord submitted that the ant issue was addressed and that she had no indication that the tenant lost food until receipt of the tenant's application.

*Unreasonable disturbances*-The tenant submitted that she suffered a loss of quiet enjoyment due to the two heat pumps running for 18 hours a day, causing her to keep her windows and doors closed to block the noise.

The tenant said she was informed the heat pumps were 10 years old, and were usually located at the rear of buildings.

The tenant also submitted that noise from other tenants and marijuana smoke caused her disturbances.

In response, the landlord submitted the heat pumps for the two sides of the side-by-side duplex were located in the rear of the building, and that they were serviced every year.

The landlord submitted that any issues with other tenants were unknown to her, first hearing of it with the tenant's application.

*Bank fees*-The tenant submitted that as the landlord ignored her requests for compensation for cleaning the rental unit, she placed a stop payment on her rent cheque for the final month, in order to have the issue addressed.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking reasonable 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.

#### ***Landlord's application-***

*Loss of rent revenue*-Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ending on February 28, 2014.

In the case before me, I accept that the tenant provided insufficient notice that she was ending the fixed term tenancy agreement prior to the end of the fixed term and I find the tenant was responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that she take reasonable measures to minimize her loss.

I find the landlord provided undisputed testimony that the tenant ended the tenancy prior to the end of the fixed term and that the landlord took reasonable measures to minimize her loss by advertising the rental unit immediately.

I therefore find the landlord submitted sufficient evidence that due to the tenant's breach of the tenancy agreement, the landlord is entitled to recover her loss of rent revenue for January 1-7, 2014. I calculate this amount to be \$367.08 ( $\$1595 \times 12 \text{ months} = \$19,140 \text{ yearly rate} \div 365 \text{ days per year} = \$52.44 \text{ daily rate} \times 7 \text{ days} = \$517.80$ ); however, as the landlord has arrived at a different calculation, lower than my calculation, I grant the landlord's request for \$360.16.

*Unpaid utilities*-I find that the tenancy agreement provided that the tenant was responsible for 1/3 of the utilities for the residential property, payable to the landlord, and that the landlord submitted sufficient evidence that the tenant owed the amount of \$503.98.

I allow the landlord recovery of her filing fee paid for this application in the amount of \$50.

Due to the above, I find the landlord is entitled to a monetary award of \$914.14, comprised of loss of rent revenue of \$360.16, unpaid utilities of \$503.98, and the filing fee of \$50.

***Tenants' application-***

*Cleaning by tenant*-With respect to the tenant's claim for \$105 per hour for cleaning, I do not find this to be a reasonable amount, as the tenant has not provided evidence of special skills in this area or that the state of the rental unit required extraordinary cleaning. In reaching this conclusion, I was partially influenced by the lack of photographic evidence by the tenant depicting the condition of the rental unit left by the contractors.

I find the landlord's offer of \$20 per hour for the 6 hours claimed by the tenant to be reasonable, and I therefore award the tenant compensation of \$120.

*Disturbance by contractors*- The tenant's claim for monetary compensation is due to multiple attendances by contractors and unsuitable living conditions, resulting in a loss of use and quiet enjoyment of the rental unit, for which she should be compensated.

Under section 32 of the Act, a landlord must repair and maintain a rental unit so that it complies with health, safety, and building standards required by law and is suitable for occupation by a tenant given the age, character and location of the rental unit.

It is important to note that major repair issues with the rental unit may occur from time to time; however, such events do not automatically entitle a tenant to compensation. Rather, the tenant must demonstrate that the landlord was aware of the problem and was negligent in dealing with the problem which caused the tenant to suffer a loss of use of the rental unit or loss of quiet enjoyment of the unit. Negligence may include inadequate or an unreasonably delayed response to a known problem.

In considering the evidence of the tenant, I do not find that she is entitled to monetary compensation. The tenant failed to supply evidence that the landlord was notified that this was an issue, or any other evidence that there was an issue with the contractor's work. I am also satisfied that the totality of the work performed did not last two weeks or that the tenant was unable to use the rental unit for normal use.

I therefore dismiss the tenant's monetary claim of \$797.50.

*Loss of heat/ 7 days*-I find the tenant submitted insufficient evidence to support this claim. In reaching this conclusion, the tenant did not provide evidence that the landlord had been notified that there was an issue with the lack of heat, or that this was the case.

Without such written proof that the landlord was notified and due to the parties' disputed verbal testimony, I find the tenant has not met her burden of proof.

I therefore dismiss her claim for \$372.19

*Loss of normal power use*-This claim is due to the tenant's assertion that she was unable to use two kitchen appliances at once. I do not find that the tenant has presented sufficient evidence that the rental unit did not comply with the health, safety, and building standards required by law and not suitable for occupation by a tenant given the age, character and location of the rental unit.

I also find that the tenant has not given any details or particulars as to how she arrived at this amount of her claim.

I therefore find the tenant submitted insufficient evidence to support that the landlord has violated the Act, and I therefore dismiss her claim for \$797.50.

*Loss of food due to ants*-I find the tenant has presented no evidence that she lost food due to an ant infestation, or that the landlord has violated the Act in this regard. I dismiss her claim for \$145.

*Unreasonable disturbances*-I find the tenant has submitted no evidence that noise from the heat pumps, marijuana from a neighbour, or noise from the upper tenants were issues ever brought to the landlord's attention. As the tenant failed to supply evidence that the landlord was notified that these issues existed and as the landlord argued that she did not know of these issues until receiving the tenant's application, I find the tenant has submitted insufficient evidence to support her claim.

Her claim for \$797.50 is dismissed.

*Bank fees*- In relation to the tenant's claim for bank fees for a stop payment charge to get the landlord's attention, I find that the tenant has chosen to incur costs that cannot be assumed by the landlord. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs for choices made by the tenant. Therefore, I find that I do not have authority to award the tenant bank fees, as they are costs which are not named by the Act and I dismiss her claim for \$30.

As I find the tenant has had partial success with her application, I award her a partial filing fee of \$25.

Due to the above, I find the tenant is entitled to a monetary award of \$145, comprised of cleaning costs of \$120 and a partial filing fee of \$25.



I find it important to note that the tenant submitted evidence of her allegations that the rental unit was an illegal suite; however, this evidence had no influence on my findings as this allegation, whether true or not, did not impact a legal tenancy.

Conclusion

The landlord's application is granted as I have approved a monetary award of \$914.14.

The tenant's application has been granted in part as I have found she is entitled to a monetary award of \$145.

I have set off the tenant's monetary award of \$145 from the landlord's monetary award of \$914.14, and granted the landlord a monetary order for the difference, or \$769.14.

The landlord is granted a monetary order in the amount of \$769.14 and it is enclosed with her Decision.

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

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: June 25, 2014

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Residential Tenancy Branch

