



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND; MNSD; MNDC; FF; O

### **Introduction**

This Hearing was convened to consider the Landlord's Application for Dispute Resolution seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing. The matter was convened on July 24, 2014. It was confirmed that the Tenant received the Notice of Hearing documents by registered mail, on April 10, 2014. It was also confirmed that the Tenant received the Landlord's amended monetary claim, documentary evidence, and a CD on July 18, 2014. The Tenant also provided documentary evidence to the Residential Tenancy Branch, but stated that he did not serve the Landlord with his documentary evidence because the Landlord had already submitted the documents. Therefore, the Tenant's documentary evidence was not considered and the Tenant was invited to provide his evidence by oral testimony.

On July 24, 2014, the Landlord gave submissions with respect to his claim. The time allotted for the Hearing ran out before the Tenant could respond to the Landlord's submissions. The matter was adjourned to October 23, 2014. The Tenant provided a new address for service of documents.

On October 23, 2014, the Landlord signed into the Hearing, but the Tenant did not. The Tenant's agent signed into the Hearing and requested an adjournment because the Tenant was very ill. The Landlord did not object to an adjournment and the matter was rescheduled to December 9, 2014. Both parties attended on December 9, 2014.

### **Preliminary Matters**

The Landlord's Application for Dispute Resolution indicates that he is seeking "other" relief; however, he did not provide sufficient details in his Application with respect to what other relief he is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Landlord's application is dismissed.

### **Issues to be Decided**

1. Is the Landlord entitled to compensation for loss of some trees on the rental property?
2. Did the Tenant authorize the installation of a smart meter at the rental unit, and if so is the Landlord entitled to compensation?
3. Is the Landlord entitled to compensation for undue hardship, distress and humiliation?
4. Is the Landlord entitled to a monetary award for loss of revenue for the month of May, 2014?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on April 1, 2013 and ended on or about April 30, 2014. Monthly rent was \$1,250.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$625.00 and a pet damage deposit in the amount of \$625.00 at the beginning of the tenancy.

#### **The Landlord gave the following testimony:**

The Landlord testified that on September 10, 2013, the Tenant gave the utility company permission to install a smart meter at the rental unit and that he led the utility company to believe that he was the owner of the rental property. The Landlord testified that he had specifically directed the Tenant to let him know if the utility company wanted to replace the meter with a smart meter because the Landlord did not want a smart meter at the rental unit. The Landlord submitted that smart meters infringe on his right to privacy because the smart meter sends information every minute to the utility company. The Landlord testified that he called the utility company and was advised that the smart meter was installed on September 20, 2013, and that they would not uninstall it. The Landlord seeks compensation from the Tenant in the amount of \$12,994.34 for giving the utility company unauthorized permission to install the smart meter.

The Landlord testified that at some point in May, 2013, the Tenant also gave the utility company permission to cut down 2 trees on the rental property. The Landlord testified that the Tenant did not ask the Landlord for authorization to allow the utility company to cut down the trees. He stated that the trees had died "a few weeks before" but that they could have stood 10 years more. The Landlord provided a copy of an e-mail from the utility company, which indicates that the Tenant gave permission because, in the opinion of the utility company, the trees had evidence of decay and were hazardous to a power line. The Landlord seeks compensation in the amount of \$2,500.00 for this portion of his claim.

The Landlord testified that the Tenant also cut down three healthy medium sized trees without the Landlord's permission. The Landlord stated that he got an estimate for replacing the trees with three smaller trees, at the cost of \$1,000.00 each. The Landlord seeks compensation in the amount of \$3,000.00 for this portion of his claim.

The Landlord stated that the Tenant was rude to his property manager, which caused his property manager to quit. He testified that he and two friends went to the rental property to give the Tenant a notice on October 30, 2013, and that the Tenant humiliated him in front of his

friends by making rude comments and refusing to allow him to enter the rental unit. The Landlord seeks a monetary award in the amount of \$4,000.00 for undue hardship, distress and humiliation.

The Landlord stated that he was trying to re-rent the rental unit and that there was a lot of interest, but that after viewing the rental unit six prospective Tenants would not consider renting because they were disgusted by the lack of cleanliness and the odour in the rental unit. The Landlord provided a CD with photographs and videos of the rental unit. He stated that he had to clean the property before he could show prospective tenants. The Landlord stated that he lost revenue for the month of May, 2014, because of the filth in the rental unit and because the Tenant refused to allow the Landlord to inspect the rental unit except "during business hours, not on weekends, during evenings or during statutory holidays". He seeks compensation in the amount of \$1,250.00.

The Landlord stated that the Tenant did not inform him of a leak in one of the walls of the rental unit. He stated that the Tenant did not have the heat turned on and that the humidity was high in the rental unit, causing mould. The Landlord stated that there was dog hair everywhere, filth on the walls, dog excrement on the dog's bed and turtle excrement on the floor. The Landlord seeks the following compensation for cleaning and painting the rental unit at the end of the tenancy:

Painting	\$527.93
Cleaning	\$375.00
Damage to floors	\$250.00
Mould damage (estimate)	<u>\$350.00</u>
	\$1,502.93

The Landlord provided a breakdown for the cost of painting, as follows: 6 gallons of paint @46.99 = \$281.94; wallpaper \$65.99; labour 6 hours x \$30.00 = \$180.00. The Landlord provided copies of a receipt for the cost of house cleaning along with a copy of the Condition Inspection Report.

The Landlord seeks a monetary award for unpaid utilities in the following amounts:

Water bill for January, February and March, 2014	\$127.34
Water bill for April, 2014	\$38.09
Water bill for May, 2014	\$27.65
Tenant's share of curbside collection bill (5 months)	<u>\$55.55</u>
	\$248.58

The Landlord provided copies of utility bills in evidence. The Landlord also seeks to recover his ferry fees and parking fees for three trips to Nanaimo to repair and clean the rental unit, in the amount of \$403.70. Copies of receipts for this claim were also provided.

The Tenant provided the following testimony:

The Tenant denied authorizing the utility company to install a smart meter at the rental unit. He stated that the only documentary evidence the Landlord provided in support of this allegation was a document with the Landlord's hand written notes of a telephone conversation with the utility company. The Tenant submitted that this was insufficient proof that he had given the utility company permission to install the meter.

The Tenant also denied authorizing the utility company to cut down two trees. He also denied cutting down the three smaller trees.

The Tenant stated that he felt persecuted by the Landlord and that he was overwhelmed by the situation. The Tenant stated that he felt that he was defending a "heap of hearsay".

The Tenant testified that he made the rental property available for viewing and that it was reasonably clean. The Tenant stated that the Landlord has not provided sufficient evidence that the rental unit was not reasonably clean. The Tenant stated that he did not look at the CD, although he was able to open it.

The Tenant stated that he told the Landlord about the leaky roof and the leaky taps "by e-mail or regular mail" and that the Landlord said he was going to fix them. He stated that he liked his home to be cool and that it was not the cause of the mould in the rental unit.

### **Analysis**

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, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to prove four different 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 Tenant in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage being claimed.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulation or tenancy agreement, I may determine the amount of, and order that party to pay, compensation to the other party.

Regarding the Landlord's claim regarding the unauthorized installation of a smart meter:

The utility bill is in the Landlord's name. I have insufficient evidence that the Tenant authorized the utility company to change the meter, or that permission from the owner was even required in order to change the meter. The onus may have been on the owner to advise the utility company in advance that he did not want a smart meter on his property. The Landlord did not provide a written statement from the utility company confirming that the Tenant represented himself as the owner and authorized the installation. The Landlord may or may not have a claim, in another jurisdiction, against the utility company; however, this portion of his application against the Tenant is dismissed.

Regarding the Landlord's claim with respect to the loss of trees:

I accept the Landlord's testimony and documentary evidence that the Tenant gave the utility company permission to cut down the two dead trees. An e-mail from the utility company to the Landlord on October 9, 2013, states, "[the utility company] contacted [the Tenant] in May 2013. They talked briefly about the reasons the two trees needed to be removed as they were dead and evidence of stem decay present. [The Tenant] agreed with our assessment and at that point gave permission to remove the trees with instruction to clean up the debris and buck the main stem for fire wood. At some time in August 2013 the trees were removed under contract."

I find that the Tenant had no right under the Act, regulation or tenancy agreement to give permission to cut down trees on the rental property. However with respect to the two dead trees, I find that the Landlord did not suffer a loss. The trees were dead and would have had to been removed.

With respect to the three lesser sized healthy trees, I find that the Landlord did suffer a loss. However, I also find that the Landlord did not provide sufficient evidence of the amount of the loss. The Landlord did not provide an estimate from an arborist or a nursery indicating the value of the three trees. The documents provided by the Landlord in support of this portion of his claim include: his hand written note, including the remark, "I am in the process of trying to get more quotes for the same size trees"; and a copy of a tree protection bylaw which indicates the municipality may levy fines of "\$1000 - \$10,000/tree" for unlawful removal of certain tree species over a certain size. Nonetheless, I find that the Landlord did suffer a loss and pursuant to the provisions of Section 67 of the Act, I award him \$250.00 per tree for a total of **\$750.00**.

Regarding the Landlord's claims for "undue hardship, distress and humiliation"

There is no provision in the Act for compensation to a landlord for undue hardship, distress and humiliation. This portion of the Landlord's application is dismissed.

Regarding the Landlord's claim for loss of revenue for the month of May, 2014:

Section 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. The evidence shows that the rental unit was very dirty. Based on the electronic evidence and documentary evidence provided (the photographs, video, and emails from the Landlord's property manager), I find that the Tenant did not comply

with Section 32(2) of the Act and that the Landlord suffered a loss of revenue as a result of the Tenant's breach. This portion of the Landlord's application is granted in the amount of **\$1,250.00**.

Regarding the Landlord's claim for damage and cleaning:

Based on the evidence provided, I find that the Landlord has established his claim for cleaning and painting the rental unit at the end of the tenancy; however, I find that there is insufficient evidence to support his claim for damage to the floors or mould damage. No breakdown of costs was provided. Therefore, I grant the Landlord a monetary award in the amount of **\$902.93** (\$527.93 + \$375.00) for this portion of his claim.

Regarding the Landlord's claim for unpaid utilities:

Utilities were not included in the tenancy agreement. I accept the Landlord's undisputed testimony that there were outstanding utilities owed by the Tenant at the end of the tenancy. Copies of the utility bills were provided in evidence. Therefore, I allow this portion of the Landlord's claim in the amount of **\$248.58**.

Recovery of the Landlord's ferry fees and parking fees:

There is no provision in the Act for recovery of a landlord's costs in travelling to and from a rental unit. This portion of his application is dismissed.

Monetary Order

The Landlord has been partially successful in his application and I find that he is entitled to recover half of the cost of the filing fee from the Tenant, in the amount of **\$50.00**.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit and pet damage deposit towards partial satisfaction of his monetary award.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Loss of three live trees	\$750.00
Loss of revenue for May, 2014	\$1,250.00
Cost of painting and cleaning	\$902.93
Unpaid utilities	\$248.58
Recovery of half of the filing fee	<u>\$50.00</u>
Subtotal	\$3,201.51
Less security and pet damage deposits	<u>-\$1,250.00</u>
TOTAL	<b>\$1,951.51</b>

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$1,951.51** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

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: December 18, 2014

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Residential Tenancy Branch

