



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary award and for an order to retain all or part of the tenants' security deposit. The hearing was conducted by conference call. The landlord's named representatives and the tenants called in and participated in the hearing. Each of the parties acknowledged that they had received the documentary evidence submitted by the other party.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

The rental unit is an apartment in New Westminster. The tenancy began on April 1, 2014 for a one year term. The monthly rent was \$1,205.00, payable on the first of each month. The tenants paid a security deposit of \$602.50 prior to the commencement of the tenancy. The tenancy agreement contained a provision authorizing the landlord to charge \$300.00 as liquidated damages said cover the administrative costs of re-letting the premises in the event that the tenants moved out of the rental unit before the end of the fixed term.

The landlord's representatives testified that the tenants complained about the water supply and the elevator and moved out of the rental unit at the end of July. The landlord succeeded in re-renting the unit effective August 1<sup>st</sup> and therefore did not suffer any loss of rental income. In this application the landlord has claimed payment of liquidated damages in the amount of \$300.00 plus the sum of \$105.00 paid for carpet cleaning at the end of the tenancy.

The tenants testified that there were two significant problems that caused them to give notice and move out of the rental unit. There are two bathrooms in the rental unit, each with its own shower. Soon after they moved into the unit the tenants found that the water supply fluctuated, abruptly changing from cold to hot. The tenants said this constituted a hazard to their young daughter who was in danger of being scalded. They said she became afraid to use the shower. In their written submissions the tenant said that when they viewed the rental unit in March, 2014 they were told by the landlord's representative that the elevators would be replaced, one at a time, starting in a month or two. After the tenants moved into the unit they said that they were stuck in the elevator on several occasions and they were told after they moved in that the elevators would not be replaced until after Christmas.

According to the documents provided the tenants reported the water fluctuation problem within two days of moving into the rental unit. The landlord's work order/request for service stated that the tenants reported that in the main bath the water in the shower "fluctuates really bad". According to the landlord's report, no issue was found when it was investigated on April 2<sup>nd</sup>. The tenants testified that they continued to have problems with the water supply, but the building manager told them that the problem with the water supply affected all the suites above and below the rental unit and that fixing it would be a major plumbing project for the whole building.

The tenants sent an e-mail to the landlord on June 25, 2014. They notified the landlord that they intended to move out on July 31, 2014. They thanked the landlord's staff for promptly attending to fix some of the problems with the rental unit, but they complained that there were some major problems with the building. They said that:

First of all, the elevators need to be fixed ASAP. We were locked inside 3 times, not able to get out. Once one elevator door was half open when it stopped between 2 stories. We feel the elevators may cause serious issues sooner or later. It is a safety hazard.

Secondly, building's water system needs to be looked after. When taking a shower in our unit, water goes from normal to super hot or super cold in just a second. Our six-year old refuses to take a shower on her own now, because of the bad experiences she had since we moved in. We consider this a major safety issue as well because hot water causes burn. We understand you looked at the issue but not able to fix it. It will be a big project for the whole building.

The landlord's building manager responded to the tenants' e-mail. She said that the landlord was currently working on the elevators and new door operators would be

arriving in about two weeks. She said that the elevators would be replaced starting in December, 2014. The building manager also said that the landlord's maintenance man would attend to have another look at the shower to see what was causing the hot and cold shower issues.

The landlord's representatives testified that the tenant did not make any further complaints about the water temperature after April 2<sup>nd</sup> until the June 25<sup>th</sup> e-mail. After the tenants attended at the building manager's office on June 27<sup>th</sup> the landlord had the maintenance man check the water system again. He replaced the zone valve. The landlord's representative said that the tenants reported that the problem continued, but told the landlord not to worry about the problem anymore because: "they were OK with it the way it was."

The landlord's representative said that replacement of the elevator door operating mechanism began on June 28<sup>th</sup> and was completed on July 24<sup>th</sup>. The elevator replacement began in January, 2015.

The landlord's representative said that the new tenants who occupied the rental unit after the tenants moved out have not complained about the water supply and she said the former occupants of the unit who lived there before the tenants moved in also did not complain about problems with water temperature fluctuations.

The tenants referred to the landlord's evidence that included a statement from the building maintenance man who said that he offered to replace the taps with temperature control taps but to do so would involve some re-plumbing work and breaking some tiles, which would take several days. He said the tenants declined the offer because the work was too inconvenient.

The tenant's disputed the landlord's evidence, in particular the written statement from the maintenance man. The tenants said the repair was not offered because it was too big a job. The tenants said they made regular verbal complaints about the water system and about the elevators before they gave their notice to move out on June 25<sup>th</sup>. The tenants testified that the building manager acknowledged the elevator problems and said she has done her best to get the owner to replace them.

### Analysis

The landlord has claimed payment of liquidated damages as a re-renting charge because the tenants ended the tenancy agreement before the expiry of the fixed term, contrary to the provisions of the tenancy agreement. The tenants' position is that they

were justified in ending the tenancy early because there were serious health and safety concerns that were not addressed by the landlord, or that were not addressed within a reasonable time frame after the tenancy commenced.

Section 45(3) of the *Residential Tenancy Act* provides:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is considered to be a term that is so important that it goes to the heart of the tenancy agreement. Section 45 requires the tenant to first give the landlord written notice of a claimed material breach and a reasonable time to rectify the problem before ending the tenancy.

The first written notice given by the tenants was contained in the June 25<sup>th</sup> e-mail that notified the landlord that the tenants were moving out at the end of July. Because the tenants failed to provide written notice of a breach and a reasonable opportunity to rectify the problems before giving their notice to end the tenancy, I find that the landlord is entitled to recover the amount of \$300.00 claimed as liquidated damages. The landlord is also entitled to recover the carpet cleaning charge of \$100.00, but not an amount for GST because any GST paid would give rise to an equal input tax credit entitlement.

### Conclusion

I have awarded the landlord the sum of \$400.00. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$450.00.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or

- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is a balance remaining of the tenants' security deposit after deducting the award in favour of the landlord. I order that the landlord retain the sum of \$450.00 from the security deposit of \$602.50 that it holds and I grant the tenants an order under section 67 for the balance of their deposit in the amount of \$152.50. This order may be registered in the 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: February 27, 2015

---

Residential Tenancy Branch

