



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

DRI, MNDC, RP, RR, FF

### Introduction

This hearing was convened in response to an application for dispute resolution by the tenant pursuant to the *Residential Tenancy Act* (the Act). The tenant filed for Orders: as follows:

1. Dispute an *additional* rent increase: greater than calculated under the Regulation – Section 43(5)
2. A monetary Order for damage and loss – Section 67
3. An Order for the landlord to make repairs – Section 62
4. Allow the tenant to reduce rent for repairs by the tenant or on a service or facility agreed upon but not provided – Section 65
5. An Order to recover the filing fee for this application(\$100) - Section 72

Both parties attended the hearing and were given opportunity to settle their dispute, present *relevant* evidence, and make *relevant* submissions. The parties each acknowledged receiving all the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

### Preliminary Matters

Both parties filed submissions of evidence the landlord imposed a rent increase effective May 01, 2015 - in the amount calculated in accordance with the Regulations – which the tenant seeks to dispute. Section 43(2) of the Act states that a tenant may not make an application for dispute resolution to dispute a rent increase that complies with the Act. As a result, this portion of the tenant's application is preliminarily **dismissed**. The hearing proceeded on the merits of the balance of claims.

### Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Should the landlord be ordered to make repairs?

Should the tenant be allowed to reduce the agreed rent?

*An applicant bears the burden of proving their respective claims.*

### **Background and Evidence**

The *relevant* undisputed evidence in this matter is as follows. The tenancy began March 12, 2011 as a written tenancy agreement. As of May 01, 2015 the payable rent is \$1845.00 due in advance on the 1st day of each month.

The tenant seeks compensation representing loss of use and a devaluation of the tenancy agreement from a compromised floor and fireplace. The parties agree that a water ingress - water leak - resulted in the need for exterior structural repairs and structural repairs to the rental unit flooring with removal and replacement of the fireplace insert. The repair work began March 19, 2014 – coinciding with the same day the tenant also temporarily left the unit for “vacation”. The tenant claims that some of their living room furniture was pushed to the side of the rental unit to accommodate the work and at one point the fireplace insert was removed and inside the living room. During the course of the repairs, as of April 01, 2015, the tenant was not obligated to pay any rent for the following 9.5 weeks - to June 08, 2014 – including hotel/alternate accommodations costs – which were covered or compensated by the landlord in the sum of \$4327.00.

The tenant seeks compensation for the period *before and after* the landlord’s compensated period – March 19-31, 2014 and June 09 - 30, 2014 in the aggregate of \$2075.00. The tenant testified that they were absent from the rental unit in March 2014, and as the rental unit was under some repair, they should not be obligated to pay any rent for this period as the rental unit was not “fit to reside in”. The tenant also testified that in the absence of notice from the landlord that repairs would be completed by June 08, 2014, they “committed” in May 2014 to occupying living accommodations in Birch Bay, Washington State (USA) to the end of June 2014, and claim they suffered a loss as a result - therefore should not be obligated to pay the balance of rent for June 2014. The landlord testified that they felt generous in compensation to the tenant for the period in which the rental unit was not *fully* useable, in the amount of \$4327.00, and testified it is appropriate the tenant should be responsible for the period in which the rental unit was useable in accordance with the tenancy agreement.

The tenant further seeks \$200.00 for cleaning the rental unit after completion of the repairs – to which the landlord agrees, on production of evidence the tenant paid for the cleaning.

The tenant seeks \$100.00 per month the fireplace was not available to the tenant. The tenant claims that for the period of July 14, 2014 to February 18, 2015 the fireplace was not useable, not operational, and also apart to an extent, while undergoing assessment and repair –to which facts the landlord agreed.

The parties agree that the hardwood flooring repair resulted in a visual difference in the flooring material and a contrast in the colour between the old and new flooring. The tenant provided some photographs depicting the contrast in the appearance of the flooring. The new flooring, although claimed by the landlord is the same flooring, is clearly lighter in colour appearance and one photograph depicts some difference in the installation. The landlord argued the difference in colour is the result of the passage of time and unavoidable, and that it should darken. The landlord testified that despite the issues with the flooring it is safe and complies with the respective laws. The tenant argued that the difference is apparent and devalues the appearance and enjoyment of the unit and therefore reduces the value of the tenancy agreement. The tenant seeks a reduction in the value of the tenancy agreement from July 01, 2014 onward in the amount \$300.00 per month – representing 1/3 of the square footage calculation of the new flooring – then dividing it by 2 – arriving at 1/6 or 17% of the payable rent.

### **Analysis**

In this matter the tenant has advanced claims of loss and the burden of proving claims of loss rests on the tenant who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the tenant take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, in this matter the tenant must satisfy each component of the test below:

1. *Proof the loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or agreement*

3. *Verification of the amount required to compensate for the claimed loss.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss.*

The tenant bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses claimed.

In respect to the claim the tenant should not pay rent for the period of March 19-31, 2014, I find the fact the tenant was absent on vacation is not relevant to the basis under which the rent is payable. I accept the rental unit would not be fully usable due to repairs and the tenant has not provided evidence that its full use or occupancy was required or at issue for the period of Mar19-31, 2014, or that a limitation of the rental unit during the tenant's absence resulted in a loss of quiet enjoyment for the tenant. It is available to the tenant to also view the rental unit as fulfilling a function even when not occupied. Regardless, the tenant has failed to prove they suffered a loss in this regard, or that a loss occurred due to the conduct or neglect of the landlord in violation of the *Act* or Agreement. Therefore, I must **dismiss** this portion of their claim.

As ancillary to the points articulated in the above claim, the tenant has not provided sufficient evidence they suffered a loss for the period June 09-30, 2014 resulting from the actions or neglect of the landlord in violation of the *Act* or Agreement. I do not accept the landlord should be responsible for a choice of the tenant to commit to alternate accommodations without communication with the landlord confirming the prudence of this course of action. Moreover, the tenant has not met the test established by Section 7 of the *Act*. As a result I must **dismiss** this portion of the tenant's claim.

In respect to the tenant's claim for cleaning, I accept that an estimate of \$200.00 may be a reasonable amount for a quantum of cleaning, but I have not been presented with

any evidence meeting the above test for loss in this respect. As a result I must **dismiss** this portion of the tenant's claim.

I do not accept the tenant's argument that they were deprived of the fireplace as a heat source – especially during the warmest months. None the less, I accept that that the tenant and landlord contracted for the tenant to have a functioning fireplace and the tenant did not have a functioning fireplace for 7.5 months. The evidence also is that the

fireplace was sometimes apart. I find the tenant's claim of \$100.00 each month, over the entire period of the loss, to be extravagant, while less so for colder months. As a result I find a global amount representing loss of use of the fireplace for the *duration of the loss* is more appropriate. I grant the tenant the set amount of **\$600.00** for loss of use of the fireplace.

I accept the tenant's argument the visual contrast in the flooring represents a loss in the enjoyment of the rental unit and I accept the tenant's argument it no longer depicts that for which they contracted. I find the tenant should be compensated for this loss; however I do not accept that a simple square footage calculation accurately reflects the value of the loss and I have not been provided sufficient evidence establishing how a 17% reduction of the rent is reasonable representation of the loss. In the absence of such evidence I grant the tenant a nominal award – representing the tenant's non-pecuniary or intangible loss respecting the flooring issues, for which I award the tenant the amount of **\$1000.00**. I further find that an ongoing reduction in the value of the tenancy agreement in the amount of \$75.00 from the current payable rent fairly represents the loss going forward - establishing the monthly payable rent in the amount of **\$1770.00** ( $\$1845 - \$75 = \$1770$ ), as of July 01, 2015.

I have not been presented with evidence the rental unit is the subject of a structural deficiency or otherwise requires repairs for health or safety reasons, and as a result I make no order in respect to the application for the landlord to make repairs – effectively rendering this portion of the tenant's application **dismissed**.

Calculation for Monetary Order

As the tenant was partially successful in their application they are entitled to recover their filing fee.

Loss – re: fireplace	\$600.00
Loss – re: flooring	\$1000.00
<i>Filing fee</i>	\$100.00
<b>monetary award for tenant</b>	<b>\$1700.00</b>

**Conclusion**

**I grant** the tenant an Order under Section 67 of the Act for the amount of **\$1700.00**.

The tenant can choose to collect on the Monetary Order through the Small Claims Court (if necessary) and enforced as an Order of that Court **or** through reducing this amount from future rent payments.

**I Order** that as of July 01, 2015 the payable monthly rent of the tenancy will be **\$1770.00**.

**This Decision is final and binding on both parties.**

*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, 2015

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Residential Tenancy Branch

