



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MND, FF

### Introduction, Preliminary, and Procedural Matters

This was the reconvened hearing dealing with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

This hearing began on July 30, 2015, was attended by the landlord's agent (hereafter "landlord"), the tenant and her daughter and dealt only with the tenant's request for an adjournment in order to be able to participate in the hearing due to a hearing impairment.

An Interim Decision was entered on August 4, 2015, should be read in conjunction with this Decision and further, it is incorporated herein by reference.

The parties were informed at the original hearing that the hearing would be adjourned in order to take up the issues in the landlord's application, with the tenant being able to participate in the manner she chose.

At the reconvened hearing, the landlord was present; however, the tenant failed to attend.

The landlord testified and submitted a Canada Post registered mail receipt with tracking number showing that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on January 16, 2015. The landlord stated that the tenant collected the registered mail.

Based upon the submissions of the landlord, I accept the tenant was served the landlord's original application for dispute resolution in a manner complying with section 89(1) of the Act.

The landlord also filed an amended application, on or about May 29, 2015, increasing their original monetary claim. The landlord submitted that the service address was the rental unit address, and that as the tenant was no longer living there, the registered mail

was returned. I have therefore declined the landlord's amended application and the hearing proceeded on the landlord's original application. The landlord is at liberty to address additional claims with another application for dispute resolution.

The Interim Decision of August 5, 2015, informed the parties that the reconvened hearing would proceed whether or not they were present, and as the tenant failed to attend the reconvened hearing, the reconvened hearing continued in her absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, 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

Is the landlord entitled to monetary compensation from the tenant for alleged damage to the rental unit and to recovery of the filing fee paid for this application?

#### Background and Evidence

The landlord submitted that the tenancy began on August 1, 2013, monthly rent was \$600.00, and the tenant paid a security deposit of \$300.00.

The landlord stated further that she was not aware of the date the tenant vacated the rental unit, as the tenant failed to provide notice; however, the landlord discovered the tenant had vacated the rental unit sometime in March 2015, after attending the residential property for repairs.

In support of their monetary claim of \$2179.88, the landlord submitted that sometime in December 2013, the tenant was cooking food on her stove and fell asleep, which caused a kitchen fire in the rental unit.

The fire caused smoke to fill the 2<sup>nd</sup> floor of the apartment building, resulting in the fire department being called to the residential property. According to the landlord, the company the landlord employs for afterhours issues was called in order to let in the fire department.

The fire department officials went from door to door to determine the source of the smoke, and after pounding on the tenant's door, without answer, the fire department was forced to force open the door. The landlord submitted that the tenant was unaware that her unattended food had caused a fire or of the pounding on her door due to a hearing impairment.

According to the landlord, the landlord incurred expenses due to the fire caused by the tenant, in the amount of \$194.91 for the on call company and for replacement of frame and steel door which was damaged when the fire department had to knock in the door, in the amount of \$2184.97, for a total of \$2379.88.

The landlord submitted that the tenant promised to pay the landlord for the expenses incurred, by payment plan; however, the tenant paid only 8 payments of \$25.00 each, for a total of \$200.00 prior to stopping the payments and vacating the rental unit, leaving a balance of \$2179.88.

The landlord's relevant evidence included, but was not limited to, the invoices for expenses claimed, email communication between the landlord and the tenant arranging for the payment plan, the written tenancy agreement, and a tenant ledger sheet.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

Damage to a landlord's property or other losses are not the responsibility of the tenants unless the tenants have been negligent in the duty owed to the landlord or have breached the Act.

In the case before me, while I do not find that the tenant's acts were intentional, I find that the landlord submitted sufficient evidence to show that the tenant was negligent when she fell asleep while cooking food on the stove; in other words, I find the tenant failed to exercise the degree of care considered reasonable under the circumstances, resulting in a loss to the landlord.

I therefore find the landlord is entitled to recover their losses for repairs for damage to the door and the on call service to attend the residential property, due to the tenant's negligence.

Due to the above, I find the landlord is entitled to a total monetary award of \$2229.88, comprised of total damage and expenses for the call out for the on call service and the door company for door repair of \$2179.88, and \$50.00 for recovery of the filing fee paid for this application.

At the landlord's request, I direct them to retain the tenant's security deposit of \$300.00 in partial satisfaction of their monetary award of \$2229.88 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1929.88, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order 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.

Conclusion

The landlords' application for monetary compensation is granted as they have been granted a monetary award of \$2229.88 and have directed them to retain the tenant's security deposit \$300.00 in partial satisfaction.

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: October 20, 2015

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Residential Tenancy Branch

