



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for loss of quiet enjoyment of the rental unit. The tenant has also requested recovery of the filing fee for this application. Both parties attended the hearing and had an opportunity to be heard.

Originally, this hearing had been scheduled to hear an application by the landlord for an additional rent increase and the tenant's dispute of that rent increase but in the interim, on October 31, 2015, the tenant had moved out of the rental unit thus rendering the rent increase issue moot. Both parties withdrew their applications relating to the rent increase at the hearing.

### Issue(s) to be Decided

Is the tenant entitled to compensation for loss of quiet enjoyment of the rental unit?  
And if so, how much compensation is the tenant entitled to?

### Background and Evidence

This tenancy began on December 1, 2009. The rent was \$985.00 until June 1, 2015 when the rent went up to \$1005.00. The rental unit is a one bedroom condo in a large concrete tower in downtown Vancouver. The event that gave rise to the bulk of the tenant's claim is a flood that occurred on December 19, 2014 – there had been two previous more minor floods but the flood of December 19 was the subject of the claim herein. There is no dispute about the fact of the flood and that the rental unit was affected by the flood. The landlord took steps right away to address the situation at the rental unit and advised the tenant that she would not have to pay rent for January 2015 as compensation. As it turns out, the repairs to the unit took place over several months and were ultimately completed in July 2015.

To avoid repetition, I will not go through the details of what was done each month to the unit as these facts will be put forth in the analysis below.

In summary, the tenant claims that her quiet enjoyment of the unit was reduced as a result of repairs that had to be made to the unit following the flood as well as by plumbing (toilet and hot water) issues that arose in the month of April.

In response, the landlord claims that the repairs were carried out in a professional and timely manner and that the one month's compensation given the tenant already should suffice.

Both parties submitted extensive documentary evidence and written submissions in support of their positions. I found both parties to be intelligent, well-spoken individuals who both honestly felt that their positions were reasonable in the circumstances. In the context of the flood and following repair process, the relationship between the parties became strained and resolutions of issues more difficult. Ultimately, the landlord applied for an additional rent increase on July 15, 2015 and the tenant filed the application herein on July 23, 2015

### Analysis

The tenant has asked for compensation from the landlord for loss of quiet enjoyment as follows:

December/January	\$500.00
February	\$500.00
March	\$500.00
April	\$250.00
May	\$250.00
July	\$750.00
TOTAL	\$2750.00

As I explained to the parties at the hearing, in assessing this claim I refer to Residential Tenancy Policy Guideline No. 6 which states, in part, as follows:

*It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.*

*In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.*

I shall now deal with each portion of the tenant's claim in turn.

December/January (\$500.00) – The tenant states as follows in her written chronology: “Flood occurred December 19<sup>th</sup>. Fans were in my unit for 4 weeks (I received one month free rent December 19 – January 19<sup>th</sup>. Fans were not removed until the end of January and there were workers in and out of the unit.” Essentially, the tenant wants another \$500.00 for the disruption suffered in the December/January period. That would bring compensation for this period up to \$1,485.00 or one month and 16 days in total. The evidence before me as well is that the tenant was away on vacation for the month of January.

To my mind, \$500 seems excessive when the tenant did not assert that she could not even live in the unit during this period and in fact was away for most if not all of the month of January. I must also balance the tenant's right to quiet enjoyment and the landlord's right and responsibility to repair the damage from the flood. I am satisfied that the landlord's concession of one month's free rent for this period is appropriate and that no further compensation is warranted. **I therefore dismiss this portion of the tenant's claim.**

February (\$500.00) – The tenant states as follows in her written chronology: “Restoration begins, mudding, painting of walls, ceiling leaks, steaming carpets. Took all month.” In this regard the tenant has claimed another \$500.00 or 16 days of compensation. At the hearing, the item that seemed to cause the tenant the most inconvenience was the carpet cleaning which required her to move a lot of her things out of the way. The tenant testified that the cleaning took only one day but that it was not done properly and resulted in the cleaning having to be repeated in March.

In response to this claim the landlord acknowledged that the carpet cleaning took one day and that two walls were repaired and painted during this period. Repairing the walls required mudding and sanding and repainting which according to the landlord took “two or three days”. The tenant did not give an exact tally of the number of days that the wall repair took but I find on the evidence before me that the wall repair and carpet cleaning took a total of 4 days and that the time needed to move furniture was another full day for a total of 5 days.

Again, taking into account the policy guideline requirement of balancing the rights and duties of the parties, **I find that a per diem award of \$35 for 5 days ( \$985 / 28 days = \$35 per day ) for a total of \$175.00 ( 5 x \$35 = \$175 ) is appropriate.**

March (\$500.00) – The tenant has claimed another \$500 for March based on the following written submission: *“Re-do the work they did the previous month as it was done incorrectly. Hot water issues for weeks. There was no hot water running, I had to go to the gym next door or stay with my mother until it was fixed. The toilet also broke and was not fully functional. When it was repaired we were told not to use it for the day by the plumber as the sealant needed to settle.”*

According to the landlord’s written submissions, the tenant never advised her of the hot water problems until she received the tenant’s hearing package. The landlord disputes that there was no hot water for any lengthy period of time but rather that the strata corporation was changing a part for the hot/cold water in the bathroom for many units and that it is simply not possible that there was no hot water for “weeks”. The landlord also testified that the toilet was repaired immediately upon notice from the tenant that it was not functioning properly. The landlord also submitted a letter from the plumber which states that “at no time” did the tenant “not have access to the toilet.”

In hearing and reading the evidence about this portion of the tenant’s claim, I am not satisfied that there is adequate specificity on the tenant’s part as to the nature and extent of the loss of use of the rental unit or facilities therein. Rather, I find that the claim for this month is more in the category of a ‘temporary discomfort and inconvenience’ than a loss of use. **I therefore dismiss this portion of the tenant’s claim.**

April (\$250.00) – In her written submissions the tenant states as follows for her April claim: *“Insurers as well as more restorations began. The toilet acted up for a second time and took a week to repair, still having hot water issues.”* The landlord disputed this portion of the tenant’s claim for largely the same reasons as she did the March claim.

In hearing and reading the evidence about this April portion of the tenant's claim, I am again not satisfied that there is adequate specificity on the tenant's part as to the nature and extent of the loss of use of the rental unit or facilities therein. Rather, I find that the claim for this month is more in the category of a 'temporary discomfort and inconvenience' than a loss of use. **I therefore dismiss this portion of the tenant's claim.**

May (\$250.00) – In her written submissions, the tenant states as follows: *"They left supplies as well as cardboard on the floor taped down while they were in and out."* The tenants photos show that the workers had left a roll of plastic, some paint cans and a single box of floor tiles. There was no evidence of ladders, tools, buckets, mud, grout and so on in the photos submitted. For her part, the landlord says no tools were left because workers don't leave their tools behind and that she was never advised by the tenant that supplies left there by the workers were impeding her use of the rental unit.

Based on the evidence before me, I am not satisfied that the tenant has met the burden for proving that she suffered a loss of use of the rental unit due to supplies being left by the workers. **I therefore dismiss this portion of the tenant's claim.**

July (\$750.00) – In her written submission, the tenant states as follows with respect to her claim: *"Moved out for a week due to tile replacement. The baseboards are still not repaired, they also have supplies in the storage closet taking up space. I cannot put away my belongings as it is unusable space right now. My solarium is being used as storage and that is now unusable space."* The tenants claim is divided into \$250.00 for the week she had to vacate and \$500.00 for "50% of living space being unusable. The landlord agrees that she asked the tenant to vacate for a period of 7 – 10 days while the tiling was being done and that the tenant had agreed to one week's rent as compensation.

With respect to this portion of the tenant's claim I wish to first address her argument that she could not use the storage closet due to supplies being stored therein. I have reviewed the photos submitted by the tenant of the storage closet and can only see that relatively few things were being stored there. I see some baseboards, a package of tiles and some paint cans. The overall space taken up by these items is very small and I do not understand why the tenant believed that she could not put her things back in the closet. As a result, I don't understand how the tenant can claim that 50% of the rental unit was unusable. I agree that compensation for the one week period during which the tenant had to vacate must be compensated but I am not satisfied that the tenant has established her claim for further compensation on the basis that 50% of the

rental unit was unusable. **I therefore grant the tenant an award of \$250.00 in respect of her claim for July.**

Conclusion

I have found that the tenant has established a total monetary claim of \$425.00. I have made this finding in the knowledge that the tenant has already received compensation from the landlord in the amount of \$985.00. Based on this result, I find that the tenant is entitled to recover half of her filing fee in the amount of \$25.00 for a total monetary award of \$450.00. I hereby order that the landlord pay this amount immediately to the tenant. This order may be filed 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: November 16, 2015

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Residential Tenancy Branch

