



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RAAMCO INT PROPERTY COMPANY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's agent, ST ("landlord") and one tenant, JZ ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the building manager for the landlord company named in this application and that he had authority to represent it as an agent at this hearing. "Witness JM" testified on behalf of the tenant at this hearing and both parties had a full opportunity to question the witness.

This hearing lasted approximately 83 minutes in order to allow both parties to fully present their submissions and to negotiate a settlement at this hearing. The tenant called into the conference 25 minutes late at 9:55 a.m., when the hearing began at 9:30 a.m. The tenant said that his phone battery had died. I notified the tenant that I had already begun the conference and advised him about the testimony that I had heard from the landlord in his absence.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

The tenant confirmed that he posted four pages of written evidence to the landlord's office door on the day before this hearing, December 29, 2015. The landlord confirmed receipt of the evidence and stated that he had reviewed it prior to this hearing. The landlord consented to me considering this written evidence at this hearing and in my decision. Accordingly, I proceeded with the hearing and considered the tenant's four pages of written evidence in my decision.

#### Preliminary Issue – Respondent NW

The tenant confirmed that the other tenant named in this Application, "respondent NW," never lived in the rental unit, does not live in the country and never signed the tenancy agreement. The landlord stated that he was told that respondent NW no longer lives in the rental unit but he does not have confirmation. The landlord confirmed that he was seeking orders against both tenants at this hearing.

I find that respondent NW is not a tenant in this tenancy. She did not sign the tenancy agreement, despite being listed as a tenant. I find that the landlord failed to provide sufficient evidence that respondent NW occupied the rental unit during this tenancy. The tenant stated that she does not live in the country. Therefore, my decision, order and findings below relate only to the tenant, not respondent NW. In any event, the order of possession is against the tenant and any other occupants, which would include anyone else in the rental unit.

#### Settlement of Order of Possession Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issue between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement term:

1. Both parties agreed that this tenancy will end by 6:00 p.m. on January 31, 2016, by which time the tenant and any other occupants will have vacated the rental unit.

These particulars comprise the full and final settlement of this issue for both parties. Both parties testified at the hearing that they understood and agreed to the above term, free of any duress or coercion. Both parties testified that they understood and agreed

that the above term is legal, final and binding and enforceable, which settles the above issue.

The tenant initially indicated that he wished to settle the matter, then reconsidered and then confirmed again a number of times, by way of affirmed testimony, that he wished to settle this issue and he understood that the settlement was final and binding.

The parties were unable to settle the monetary aspect of the landlord's Application and therefore, this hearing proceeded and a decision follows below regarding that portion of the landlord's Application.

#### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

#### Background and Evidence

Both parties agreed that this tenancy began on May 1, 2010 for a fixed term of one year, after which it transitioned to a month-to-month tenancy. Monthly rent in the current amount of \$890.00 is payable on the first day of each month. The tenant confirmed that he received legal notices of rent increase to raise the rent from the original amount of \$815.00 per month to the current amount of \$890.00 per month. A security deposit of \$407.50 was paid by the tenant and the landlord continues to retain this deposit.

The landlord seeks a monetary order of \$12,242.54 plus the \$100.00 filing fee. The landlord testified that on June 8, 2015, the tenant caused a water leak in his rental unit, causing damage to his unit, the unit directly below, and the surrounding hallways of the rental building. The landlord stated that the previous building manager, HB, received a complaint from the unit below the tenant's rental unit regarding the leak on June 8, 2015. The landlord stated that he has no personal knowledge of this incident, as he only took over as building manager on November 6, 2015 after the previous manager left. An incident report, dated June 9, 2015, regarding the above events was created by

the previous building manager, noting that she went and observed the downstairs occupant's unit with water leaking from the ceiling and another leak in the apartment's hallway. The report further notes that the previous building manager entered the tenant's rental unit with permission on the same date, that she observed the tenant's kitchen sink was full of dirty dishes, the water was left running and she determined that was the source of the leak. The report states that the tenant denied all of the above information. The landlord provided a copy of this incident report. The landlord stated that repairs were completed on July 29, 2015 for \$4,110.07 and October 13, 2015 for \$8,132.47 and provided two invoices to confirm same. The landlord confirmed that he did not know why the repairs took so long. The landlord also provided copies of two letters, dated June 16, 2015 and October 30, 2015, from the landlord to the tenant. The letters state that the tenant was at fault for the leak determined to be from an unattended faucet, that the tenant damaged the landlord's property and breached his tenancy agreement, that the tenant was required to reimburse the landlord for the repairs and that he should contact his insurance company regarding this damage.

The tenant testified that he did not cause the water leak on June 8, 2015. He stated that the area underneath the sink was wet, due to an old rusted pipe that burst onto the floor. The tenant agreed that the previous building manager entered his rental unit that day but denied the allegations noted in her report that he caused the leak. The tenant explained that the landlord has no proof of the source of the leak, except for the previous building manager's opinion as per her incident report. The tenant noted that the previous building manager was not present at this hearing to testify.

Witness JM is a friend of the tenant and has visited him at the rental unit. He stated that he previously worked as a labourer in the flood restoration and drainage industry for four years, but he was uncertified. Witness JM testified that he was aware of the water leak in the tenant's apartment on June 8, 2015, as he attended the unit the next day on June 9. He stated that he observed a small leak underneath the kitchen sink, that it was an area of one metre squared, that it did not drip to the below unit because it was too small, and that it may have dripped through the walls. He stated that this same area was leaking even during the hearing and that the landlord had failed to repair previous problems with pipes bursting and toilets exploding in the rental unit, causing ongoing issues. Witness JM noted that the repairs took too long for the June 8, 2015 leak, as the top flooring was removed and the underlay was left for 3.5 months before it was repaired. He stated that this was a two-hour simple repair. He indicated that the rust and corrosion of the pipes caused the leaking in the kitchen sink and that this currently continues to leak through the cabinets.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the landlord must satisfy the following four 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*, *Regulation* or tenancy 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 steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord failed to provide sufficient evidence that the tenant caused the water leak on June 8, 2015 and the resulting damages. Although the landlord provided an incident report from the previous building manager, she did not testify as to the contents or authenticity of the report at this hearing. The landlord provided hearsay evidence, which is given less weight, regarding the previous building manager's findings. I also find that the landlord failed to show that the previous building manager was an expert or professional in this field of work, such that she was qualified to conclusively determine the source of the water leak as being the tenant's kitchen sink overflowing with water and dishes.

The landlord failed to provide a report from a professional in the field, regarding the source of the water leak. The landlord simply provided two invoices from a company, stating the amounts charged to the landlord for the repair work. The landlord explained that the invoice states that the source was a "kitchen sink faucet left on" but there is no proof that this is the company's opinion, rather than what the company was told by the landlord.

I also find that the landlord failed to provide sufficient evidence of damages sustained due to the water leak. The landlord did not provide photographs of the damage. The landlord did not provide a breakdown of the repair work done, despite the fact that the company's invoices indicate that an "attached scope of work and invoice breakdown" was enclosed with both invoices.

Therefore, I find that the landlord failed to meet parts 1 and 2 of the above damages test to show the extent of the damages claimed and that they were caused by the tenant. Accordingly, I dismiss the landlord's Application of \$12,242.54 for a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, without leave to reapply.

The tenant's security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

As the landlord was mainly unsuccessful in this Application, I find that the landlord is not entitled to recover the \$100.00 filing fee. The landlord was only successful in obtaining an order of possession which the tenant agreed to, by way of a settlement, not requiring me to make a decision. Accordingly, the landlord must bear the cost of this filing fee.

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 6:00 p.m. on January 31, 2016. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 6:00 p.m. on January 31, 2016. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application of \$12,242.54 for a monetary order for damage to the rental unit, for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and to recover the \$100.00 filing fee, is dismissed without leave to reapply. The tenant's security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: January 4, 2016

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Residential Tenancy Branch

