# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**:

Tenant: LRE, OLC, O FF
Landlord: MND, MNSD, MNDC, OPC, FF

**Introduction**

This hearing was convened in response to cross-applications by the parties.

The tenant filed an application on December 11, 2015 pursuant to the *Residential Tenancy Act* (the Act), and subsequently amended, for Orders as follows:

1. To set conditions on the landlord's right to enter the rental unit – Section 70
2. For the landlord to comply with the Act – Section 62
3. To recover the filing fee for this application - Section 72.
4. To cancel the landlord's Notice to End for Cause – Section 47

The landlord filed an application on January 02, 2016 for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. An Order of Possession – Section 55
3. To retain the security deposit in partial satisfaction of the claim – Section 38
4. To recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to discuss and settle their dispute to no avail, present *relevant* evidence, and make *relevant* submissions. The tenant provided a witness under sworn affirmation.

The parties acknowledged receiving the evidence of the other to January 25, 2016. The landlord acknowledged receiving late evidence from the tenant on February 09, 2016 – submitted to this hearing on the same date. The landlord testified they had only recently reviewed the late evidence; however the evidence was not available to the hearing. The tenant testified the late evidence was in support of a new monetary claim and is also in rebuttal to the landlord's claim for damage. I determined the tenant's late evidence was unreasonably late pursuant to the Rules of Procedure, and in support of a non-existent monetary claim / application by the tenant. The tenant's late evidence was deemed inadmissible. The tenant was advised they could provide their evidence in

testimony, and it remained available to them to file for dispute resolution if they have a valid monetary claim. The parties were apprised that despite the abundance of other evidence submitted, only *relevant* evidence would be considered in the Decision. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Preliminary matters

At the outset of the hearing the tenant testified they have determined to vacate the rental unit and are moving on February 14, 2016. The tenant no longer disputes the landlord's Notice to End. The landlord acknowledged knowing of the tenant's plan to move. The parties agreed with the landlord's preference to receive an Order of Possession effective February 14, 2016 and that I would so Order pursuant to their agreement. As the tenancy is soon ending I determined the tenant's claims on application are irrelevant to a non-surviving tenancy and preliminarily **dismissed** the tenant's application in its entirety. The hearing proceeded solely on the merit of the landlord's monetary claim for damage to the unit.

## Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed?

## Background and Evidence

The relevant evidence in this matter is as follows. The tenancy originated August 01, 2015 as a written Tenancy Agreement. The hearing had benefit of the signed written agreement and the ancillary addendum of 21+ terms.

The rental unit is a basement / back unit of the residential property. At the outset of the tenancy the landlord collected a security deposit in the amount of $430.00 which the landlord retains in trust. The payable monthly rent is in the amount of $860.00 due in advance on the first day of each month.

The parties agree that on September 28, 2015 the tenant installed a shelf unit on the rental unit wall which in the process of drilling and screwing it to the drywall resulted in them piercing a *black-water* pipe (sewer) behind the drywall.

The tenant's guest, NK, acknowledged drilling into the drywall to accommodate anchors and screws for the shelf unit. The tenant claims the landlord gave them permission to drill/screw into the wall. The parties' evidence is that over the following 1 1/2 weeks (approximate 10 days) the tenant and landlord dealt with ingress of water at the floor

below the shelf unit and about the entry door until water seepage appeared at the wall of the shelf unit. The landlord investigated the wet wall and on opening the wall determined an anchoring screw of the shelf unit had pierced a toilet drain pipe behind the wall and that *black-water* was seeping from the pipe. The landlord determined the source of the water ingress at floor level to also be from the compromised drain pipe and subsequently repaired the pipe and remediated the wall and surrounding wetted area themselves. In November 2015 the landlord presented the tenant with their cost for the repairs. The tenant disagreed on the cost for the repairs.

The landlord denied providing the tenant permission to drill or screw into the wall. They referenced the tenancy agreement stating the tenant was prohibited from doing so without written permission and that the term was intentional to avoid the issues at hand.

The parties presented complementing evidence the landlord offered the tenant pay $769.65 - which the landlord claims was a reduction of over $500.00 than what the tenant should be charged for the damage, in consideration the tenant had no tenant insurance. The landlords first provided a minimally detailed invoice, and on the tenant's request an enhanced invoice, both dated November 11, 2015, for *water damage remediation / restoration, the plumbing repair, drywall repairs and repainting.* The landlord's claimed reduced offer was conditional on the tenant accepting the invoice. The tenant questioned the landlord's cost for repairs and the landlord determined to remove the claimed reduction and the invoice for damages became $1245.00. The landlord's invoice then became greater by an additional $480.00 when the landlord determined to additionally factor in their travel costs at $80.00 per hour x 6 hours for repeated visits to the rental unit toward the eventual repairs. Further dispute ensued and the landlord served the tenant with a 1 Month Notice to End for Cause claiming breach of the tenancy agreement.

The tenant provided their version of the cost for the repairs. The tenant testified a lower labour cost should be reflected for the repair work as the landlord's rate of $80.00 per hour is not reasonable.

<u>The tenant presented witness RW, whom provided affirmed testimony as follows</u>

- The witness testified having years of experience in renovations and some plumbing. They viewed the open wall and the pipe in mid-repair and determined they could repair the pipe and wall for $205.96, which in part was based on 4 hours labour at $32.00 per hour. On the landlord's question the witness acknowledged this amount did not include time leading up to the scope of the work and restoration from water damage or painting. The witness testified they did not determine a need for water damage remediation, however in such an

event the tenant owned a dehumidifier which could be utilized. On the landlord's question the witness stated they thought the pipe was 2-3 inches. The landlord claims the pipe was 4 inches as per a sanitary / sewer pipe.

The landlord provided that they operate a repairs business and their repairs were consistent with accepted restoration work for *black-water* issues / damage and mindful of health and mold concerns. The landlord provided into evidence 2 detailed estimates for the repair in question from 2 restoration companies: one estimate at $1951.68, and the other estimate at $2085.11. The landlord's preferred claim in this matter was presented as $1811.00. The document evidence is that the landlord provided a breakdown for their claim as follows:

Initial call out fee $80.00

Materials $130.00

Dehumidifier rental $75.00,

labour - 12 hours@$80/h $960.00 = for a sum of $1245.00 – as submitted

The landlord provided 3 invoices for the same repairs, including tax, as follows:

| | |
|---|---|
| November 11, 2015 | $769.65 |
| November 11, 2015 | $1307.25 |
| November 11, 2015 | $1811.25 |

**Analysis**

For reference a complete copy of the Residential Tenancy Act, Regulations and other publications are available at **www.gov.bc.ca/landlordtenant .**

On preponderance of all the relevant evidence submitted, and on balance of probabilities, I find as follows.

The parties agree the tenancy is ending February 14, 2016. As a result the tenant's application is preliminarily **dismissed** in its entirety.

Landlord's claim for damage - September 28, 2015

**Section 32** of the Residential Tenancy Act, in relevant part, states as follows.

***Landlord and tenant obligations to repair and maintain***

> ***32*** *(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

If a claim is made by the landlord for damage to property, the onus is on the landlord, as applicant, to prove their claim of loss. The onus is on the tenant to show that the expenditure is unreasonable. The normal measure of damage is the cost of repairs or replacement, whichever is least.

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, the applicant must sufficiently satisfy each component of the following test established by **Section 7** of the Act, which states;

***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.*

In relevance to this matter, the test established by **Section 7** is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or the Tenancy Agreement
3. Sufficient verification of the amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the landlord must then provide evidence that can reasonably verify the monetary amount of the loss.

Finally, the landlord must show that reasonable steps were taken to address the situation and to *mitigate or minimize* the loss incurred.
I find it is undisputed the tenant caused damage to the *black-water* drain pipe / sewer pipe. The Act prescribes a tenant is responsible for repair of damage to the rental unit caused by their actions or a person permitted on the residential property by the tenant.

I find the landlord's tenancy agreement clearly states their *written* permission was required prior to intrusion of the walls. I have not received evidence that such permission was provided in writing. Therefore, I prefer the evidence of the landlord they did not give the tenant permission to drill holes or screw into the walls. As a result, I find the tenant is obligated to compensate the landlord for the loss that resulted.

I accept the evidence of the tenant's witness that given their experience, their assessment, and their perceived scope of the work, they could have made a repair for an amount less than at issue and as they estimated. I am not persuaded the witness estimated the full scope of the work such as the initial investigation, re-painting or restoration of water damage from approximately 10 days of less-than-sanitary seepage from the damaged pipe. I am persuaded by the landlord's evidence and primarily their 2 estimates from professional restoration companies that the remedial work in this matter required additional due diligence than patching the pipe and the drywall - to prevent problems. I prefer the overall evidence of the landlord that additional work beyond that estimated by the tenant's witness was warranted.

On the face of the landlord's evidence I am not able to determine if the landlord's claim of $80.00 per hour is extravagant as per the tenant's assertions. However, I have been presented with 3 invoices for the same repair work and I accept that by definition the least amount of the 3 invoices is the landlord's offering as the required mitigated or minimized loss for remedy of the tenant's damage of September 28, 2015 – pursuant to Section 7(2) of the Act. I do not find the landlord's account for materials and a dehumidifier rental are supported by sufficient verification / evidence for their stated claim. In addition, applying the landlord's breakdown of their work hours (12 hours + 1 initial hour) it must be noted the landlord's hourly rate is greatly diminished to almost half the contested $80.00 per hour before the landlord's accounting for materials and dehumidifier. At the reduced hourly rate the landlord's claim for labour cannot be said to be extravagant.

Generally, I find the landlord's mitigated claim sufficiently meets the above test for damage and loss so as to establish compensation. As a result of all the above I grant the landlord a set *nominal amount* of **$650.00** for the damage referenced herein.

The landlord has been sufficiently successful in their claim therefore is further entitled to recover their filing fee. The landlord has requested to retain the security deposit as off-set to their monetary claim. I am mindful the parties have stated they may seek certain recourse from the other in the future. As I am ordering the tenancy at an end, and for future simplicity, the security deposit will be off-set from the award made herein.

*Calculation for Monetary Order:*

| | |
|---|---|
| Landlord's nominal award | $650.00 |
| Filing fee | $50.00 |
| *Minus Tenant's security deposit* | ***- $430.00*** |
| **Monetary Order to landlord** | **$270.00** |

## Conclusion

**I grant** an **Order of Possession** to the landlord **effective February 14, 2016**. The tenant must be served with this Order. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**I Order** that the landlord retain the security deposit of $430.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **$270.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**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: February 15, 2016

Residential Tenancy Branch