



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RP, LAT, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking orders to have the landlords undertake repairs; to change the locks and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the female landlord.

At the outset of the hearing the tenant stated that he no longer requires orders to have the landlord undertake repairs or change the locks. I amend the tenant's Application for Dispute Resolution to exclude those matters.

The tenant indicated that he had submitted photographs into evidence. He stated that he sent them by courier to the Residential Tenancy Branch office in Burnaby on Monday, April 18, 2016. He stated there was not enough time to submit them to his local Service BC office. He stated that he got the Burnaby address off of the Application for Dispute Resolution form. He stated he was told the evidence would be delivered Tuesday April 19, 2016. A review of the electronic file shows no record of any additional evidence received by the Burnaby office on April 19, 2016.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

As the tenant failed to submit evidence in accordance with Rule of Procedure 3.1 I cannot consider any of the photographic evidence that he submitted, even if it had been received by the Residential Tenancy Branch prior to the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, 70, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy was supposed to begin on February 1, 2016 as a month to month tenancy for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid.

The parties also agreed that due to work being completed on the rental unit the tenant was not able to move his belongings into the rental unit. The tenant submitted that the unit did not have a toilet; sinks or fixtures; cabinetry or countertops and appliances.

The tenant submitted that he had to stay with at hotel for a couple of days and that he set up an air mattress after the first week. The tenant seeks compensation for the hotel costs, but he did not specify the amount or submit any receipts. The tenant submitted that he had to eat out lunches and dinners for about 2 weeks and he seeks compensation in the amount of \$20.00 per day for this period or \$240.00. The tenant did not provide any receipts.

The tenant also submitted that he had to store his belongings outside under tarps in the driveway until near the end of February 2016. He states that as a result 3 cabinets, valued at \$500.00 per cabinet, were damaged. The tenant seeks compensation for this damage in the amount of \$1,500.00. The tenant did not submit any evidence of the condition of the cabinets before or after storage in the driveway or any documentation as to the value of the cabinets.

The landlord agrees the rental unit was not ready for the tenant as of February 1, 2016 but that they had offered for the tenant to stay with them in the upper unit. She stated that they had a bedroom and kitchen available for him. The tenant did not dispute that the landlord made these offers.

She also stated that she agreed the tenant had to put his things in the driveway but that he could have moved them in after February 2, 2016. The landlord went on to say that they had offered the tenant their handcart and had wanted him to move his belongings in. The tenant submitted that he couldn't possibly move his belongings into the unit due

to the condition it was in and because he wasn't aware if there would be an inspection required.

The parties agreed that while the landlords had originally offered to reduce rent for the month of February 2016 to \$300.00 they eventually agreed that the tenant would not have to pay any rent for the month of February 2016.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

I accept, based on the testimony of both parties, that the rental unit was not compliant with the requirements under Section 32(1) of the *Act*. However, as noted above the burden rests with the tenant to submit sufficient evidence to establish that he has suffered a loss as a result of the landlord's failure to comply with Section 32(1).

I find that in regard to the tenant's claim for compensation for meals and hotel accommodation he has provided no evidence of such expenses. Even if he had submitted sufficient evidence to establish any such losses, I find that by not accepting the landlords' offer to stay in their unit until his was ready the tenant has failed to take any steps to mitigate his damage or losses.

In regard to the tenant's claim for compensation for damage to his cabinets, I find the tenant has failed to provide any evidence at all of damage to the cabinets that may have been caused as a result of them being left outside.

I also note that the landlords have already compensated the tenant in the amount of \$1,000.00 in addition to the offers of staying with them for the month of February 2016.

As such, for all of the tenant's claims I find he has failed to establish that he has suffered a loss as a result of the landlord's failure to comply with Section 32(1).

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

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: April 20, 2016

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Residential Tenancy Branch