



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RP, RR, FF

### Introduction

This hearing dealt with an application by the tenant for a repair order and a monetary order including a reduction of the rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and gave affirmed evidence.

The landlord acknowledged receipt of the tenant's evidence.

The landlord advised that they had submitted 21 pages of written evidence to the Residential Tenancy Branch by fax the day before the hearing. He said that it had been sent by fax to the Residential Tenancy Branch the previous week but then they did not receive a confirmation receipt they resent it. The landlord also said he had sent the evidence to the tenant by e-mail. The tenant said she had not received it. As of the date of the hearing I had not received the evidence either.

The landlord acknowledged that the evidence was late. He said they received the Application for Dispute Resolution and Notice of Hearing by registered mail on or about May 20. He explained that they had been on holiday until June 13, after which he had been working away from home until Sunday, June 19. The landlord said their evidence package included a note from a plumber; information from the City of Vancouver website about composting; strata bylaws and minutes relating to composting; an extract from the BC Building Code; and a copy of the tenancy agreement. The tenant had also filed a copy of the tenancy agreement.

I advised the parties I would reserve any decision regarding the landlords' late evidence until after I had heard their oral testimony. At the conclusion of their testimony I was satisfied that landlords' evidence was not relevant to the issues before me and I did not require it in order to make my decision. I closed the hearing rather than adjourn it.

### Issue(s) to be Decided

- Should a repair order be made and, if so, on what terms?

- Should a monetary order be made and, if so, in what amount?

#### Background and Evidence

This tenancy commenced May 1, 2015 as a one year fixed term tenancy. Upon completion of the term the tenancy has been continuing as a month-to-month tenancy. The monthly rent of \$1550.00 is due on the first day of the month.

The rental unit is a 550 square foot studio apartment located on the 30<sup>th</sup> floor of a 1999 high rise building. The rent includes a parking space and a storage locker. According to the landlord it has a fabulous view.

The kitchen sink is a single bowl style with a garburator. The garburator is the same age as the building.

The tenant says that when she was going through the unit with the female landlord at the start of the tenancy she turned the garburator on. She told the female landlord that it was not working properly and the female landlord agreed to replace it.

She said that on May 13 the male landlord came to the unit to turn on the pilot light for the fireplace. He agreed to replace the garburator within the next three months. The landlord testified that he did not light the pilot light until September.

On August 25 the tenant sent the landlords an e-mail asking when the garburator would be replaced. The landlord came to the unit on September 2 and looked at the garburator. The tenant says he agreed to replace it at that time.

The landlord testified that his position was that if the garburator was broken they would fix it.

The landlord testified that he found that the garburator was working as usual; which is at a low capacity. The next day he e-mailed the tenant:

“Regarding the garburator; at this point we are not prepared to replace it. The unit has power and appears to be working as usual. I have asked two plumbers for advise and asked if the blades can be replaced. Both of them said it’s an older unit with minimal power not intended for anything other than sauces and dish rinsing. Please do not put solids down the sink as it is not good for building plumbing. You mentioned you were putting tea leaves in the garborator and we ask that you don’t put any tea leaves or coffee grinds down the sink.”

On September 25 the tenant sent the landlords an e-mail asking them to replace the garburator and threatening legal action if the repair was not made. In October she wrote a formal demand letter for the repair and sent it to the landlords by registered mail. In that letter she states that if the repair was not made she would file an application for dispute resolution with the Residential Tenancy Branch

The landlords did not replace the garburator and the tenant did not file an application for dispute resolution.

In the spring, when the landlords contacted the tenant to see if she was going to continue her tenancy the tenant again raised the issue of the garburator and her request for compensation for the reduced value of her tenancy.

The landlords conducted an inspection of the unit in April. The landlord testified that they told the tenant they were prepared to replace the garburator; the tenant testified that they refused to replace it. The parties also gave different versions of the plumber's visit at the end of May.

The tenant filed this application for dispute resolution on May 17, 2016.

In her application the tenant stated that the garburator smells, attracts flies whenever the temperature is warm; creates mold; and interferes with her daily life. She testified that the motor operates and the water drains but the unit is not effective. She also testified that she is very careful about what goes in the drain and she cleans the drain every week.

When asked about the delay in filing her application for dispute resolution the tenant explained that:

- Her work and volunteer schedule are very hectic.
- She did not want to spend too much time on this issue.
- She had hoped to come to a friendlier resolution with the landlords.

The landlord testified that he is prepared to remove the existing garburator and replace it with either an ordinary drain and P trap, or a new garburator. He said he could have the work done within two or three weeks. The tenant testified that she would prefer to have a garburator.

The parties both testified that there is a light in the closet that needs to be repaired. The landlord testified that he has already fixed a light once and this must be a second

broken light; the tenant says the light has never worked. Both testified that when the landlord offered to fix it this spring the tenant told him to wait until after this hearing. The tenant testified that she wanted everything fixed at the same time.

Finally, the parties both testified that they understood that as the landlord had served the Notice of Rent Increase on May 1 the effective date of the rent increase was September 1.

### Analysis

#### *Repairs*

The landlord is ordered to replace the garburator and to repair the closet light within four weeks of receiving this decision from the Residential Tenancy Branch.

#### *Financial Compensation*

Section 65(1) of the *Residential Tenancy Act* allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement. Section 7(2) requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss.

The degree of inconvenience and disruption caused by this garburator, and therefore the reduction in value of this tenancy, can be measured by the fact that the tenant waited a full twelve months between complaining about the problem and finally applying for a repair order. The tenant is a highly educated person (Ph.D.) and demonstrated in her correspondence that she was familiar with the remedies available to her. Certainly her work life is hectic but no more so than many other people applying to the Residential Tenancy Branch for dispute resolution. Further, by allowing the situation to continue without applying for a repair order the tenant did not comply with her legal duty to mitigate her damages. As a result of these factors the tenant's claim for financial compensation is dismissed. However, if the landlord does not comply with the repair order contained in this decision the tenant may apply for a rent reduction or other monetary relief as may be appropriate.

#### *Filing Fee*

As the tenant was only partially successful on her application I find that she is entitled to partial compensation from the landlord for the fee she paid to file it. I order that pursuant

to section 72(2) the tenant may deduct \$50.00 from the next rent payment due to the landlord.

Conclusion

A repair order has been made. The tenant's claim for a monetary order is dismissed.

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: June 22, 2016

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Residential Tenancy Branch