



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNDC, RP, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application.

The tenant, an agent for the tenant and an agent for the landlord attended the first conference call hearing. The parties were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. The hearing was adjourned to allow the landlord time to review late evidence sent by the tenant and to provide a response to this evidence. The matter was reconvened today and at today's hearing the tenant's agent (the tenant) attended along with the landlord's agent (the landlord). I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit, site or property?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit?

### Background and Evidence

The parties agreed that this tenancy started on February 15, 2016 for a one year fixed term. Rent for this unit is \$1,500.00 per month due on the 15<sup>th</sup> of each month.

The tenant testified that at the start of the tenancy a move in inspection was completed and a few deficiencies were found in the unit and marked on the inspection report. This is an older building and in the first 30 days other deficiencies were found such as a broken oven door which

was repaired by the landlord. The tenant testified that the toilet had always been draining slowly and the tenant was not sure if this was the type of toilet it was as the landlord had replaced the toilets just 10 months previously.

The tenant testified that as there was also a plumbing issue with a bathroom sink faucet the landlord had promised to send a plumber in to look at that in the first week of the tenancy. The tenant thought that when the plumber came she would ask him to look at the toilet and see if it was working ok as per its type or if there was an issue with it draining slowly. The tenant testified that the landlord said his plumber was on vacation and he did not come prior to the flood. The tenant testified that on March 17, 2016 just 31 days after the tenant moved into the unit the toilet flooded from the main bathroom and caused damage in the unit, two other units below and the common area hallway.

The tenant testified that they did not block the toilet with anything and it was used normally. The Strata plumber came in after the flooding occurred and found the toilet was draining slowly. He tried to unblock it but had to auger it to a depth of six feet. The tenant testified that they suggest that as this blockage was six feet down and so bad that it caused the toilet to flood, then after a tenancy of just 31 days the blockage was already in place when the tenant moved in and had just become worse. The tenant testified that the plumber said it looked like something had been there for some time.

The tenant testified that due to the flooding the floors had to be taken up and the living room furniture was placed in the master bedroom. The tenant had little space to move around and both tenants had to access the ensuite bathroom off the master bedroom until the main bathroom was repaired. The tenants also had to eat their meals sitting on their beds as they had no access to the living room. The tenant seeks compensation from the landlord for their reduced living space from March 17, 2016 until the unit was repaired on May 17, 2016. The tenant seeks to recover \$3,000.00 in compensation equal to two months' rent for the period it took the landlord to repair the unit and make it livable again.

The tenant testified that all repairs caused by the flood have now been completed.

The tenant testified that they were also claiming the cost for cleaning the tenant's rug which has affected by flood water, but as this work has not been done the tenant withdraws this section of her claim.

The tenant testified that the landlord called her a liar to the owner in the unit below. This insult caused suffering to the tenant and the landlord has defamed the tenant's character. The tenant testified the landlord has not acted in a reasonable manner and has been unsympathetic to the tenant's living conditions. It was the landlord's neglect of the unit that caused these issues. The tenant had to live with very noisy fans for five days and their hydro bills have increased because of the fans. The landlord does not want to put any money in to maintaining the unit. The tenant had tried to work with the landlord to find a fair resolution to the tenant's

concerns and sought 50 percent of the rent back for two months but the landlord had no compassion and told the tenant to just file a claim. The tenant testified that she did have renter's insurance for her belongings but her insurance would have only covered them for two nights in a hotel. Her insurance company wanted to send an adjuster to the unit but it was a week before he turned up. As the tenant thought the repairs would only take a maximum of two weeks she decided to stay in the unit. The tenant seeks a monetary award of \$1,500.00 for stress, insults made against her by the landlord and for defamation of character.

The tenant testified that their hydro usage for the first period between February 16, 2016 and March 31, 2016 was for \$99.20. As this was part of the period the fans were going for five days and nights the tenant expects that the hydro usage is higher; the tenant agreed however that she does not have another bill to compare the usage and although the tenant has filed a claim to recover hydro costs there is not a figure they have claimed.

The landlord agreed that there was a flood on March 17, 2016 and the tenant did notify the landlord when it occurred. The landlord testified that their evidence shows that the unit had been previously rented for eight months and the previous tenant said they had no issues with the toilet. The toilets were new just 10 months before the start of the tenancy and the landlord referred to the invoice showing the purchase of these toilets.

The landlord testified that during the walk through inspection he flushed the toilets and did not see any slow drainage issues as it would have been noted on the move in inspection report. The landlord referred to the inspection report and states that this report indicates that the toilets were in good condition and the only plumbing issue was a leak on a faucet in the bathroom.

The landlord testified that the owner of the unit below said the tenant had told him that she had noticed a problem with the toilet from day one. Later the tenant emailed the owner below and said she noticed the toilet was draining slowly after a week. The landlord testified that it is likely the tenant caused this blockage in the drain and the plumber had to auger it six feet down to remove the blockage. The landlord testified that he does not know what the blockage was. The landlord testified that the tenant's son and any guests would have used that bathroom. The landlord testified that if the tenant had seen that the toilet was draining slowly the tenant should have notified the landlord but failed to do so until after it had flooded. It was then the tenant's responsibility to clear the blockage caused during her tenancy but she also failed to do this. The landlord therefore disputed the tenant's claim for compensation of \$3,000.00.

The landlord testified that the tenant did lie to the owner of the unit below by saying they noticed the toilet was draining slowly on day one and then changed that to a week later. The tenant also said the bathtub was leaking but when the plumber opened the tub and wall up they were dry inside. The landlord and plumber left the unit for five minutes and when they returned there was water on the bathroom floor. This could only have been placed there by the tenant. The tenant therefore fabricated her claim that the bathtub was leaking. Because of her actions the owner

below has filed a claim against the landlord for the loss of his insurance deductible and for a loss of rental income as the tenant informed him the landlord knew of the problem with the toilet.

The tenant asked the landlord if he can prove that the tenant blocked the toilet. The landlord responded that he does not have to prove this. The tenant asked when you flush a toilet and it drains slowly why would the tenant call the landlord to report it when the landlord was supposed to be sending a plumber out to look at the faucet issue in that first week. The landlord responded that the toilet was not draining slowly from day one it is obvious it was not the landlord's neglect that caused the flood. The tenant asked what could have possibly caused the blockage and would it not be something to do with internal pipes. The landlord responded that the tenant could have flushed paper towels or other products down the toilet. It is a fact it was blocked and a fact that the tenant did not notify the landlord.

The tenant asked the landlord would it be fair to say he had promised to send a plumber out in a week and could the tenant not have asked the plumber about the slow draining of the toilet then, as the tenant was not sure this was a problem or not as the toilets were fairly new. The landlord responded that the sink faucet was leaking and he sent his plumber a picture of this and from that he determined that the faucet needed a new cartridge. As it was an older model this had to be ordered and it took six weeks for the part to come and this is why the plumber did not come out the first week of the tenancy. The tenant asked the landlord if he said his plumber was on vacation. The landlord responded that yes the plumber was on vacation but he knew the problem as the cartridge in the faucet was old. The second plumber also confirmed this.

The tenant testified that had the plumber come in the first week as promised the tenant could have shown him the toilet draining slowly to determine if the toilet had an issue or if it was just the design of the toilet.

The landlord asked the tenant if the tenant notified the landlord that there was a problem with the toilet. The tenant responded that the tenant told the landlord she had other issues in the unit and asked when the plumber was coming.

The landlord testified that there are units on four levels in this building. When he asked the plumber about the blocked pipe the plumber said it was blocked six feet down and was still in the vicinity of the unit. The landlord agreed that the pipe that was blocked may be connected to other units.

### Analysis

With regard to the tenant's claim for compensation equal to two months' rent. The tenant has the burden of proof to show that the flooding caused so much damage that it affected her quality of life in the unit and that a good deal of the rental unit was rendered unusable for two months. The tenant must also show that the flood occurred through no actions or neglect of the tenant.

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

There is insufficient evidence from the landlord to show that the tenant was responsible for the blockage in the toilet pipe that was six feet into the pipe and had a possibility of being connected to other units in the building. I find it unlikely that if this blockage was six feet down that it was still in the vicinity of the tenant's unit or pipes located in her unit. If the blockage was just below the tenant's toilet I would have more reason to believe that the tenant was solely responsible for this blockage and based on the evidence provided I do not.

Further to this I find the tenant's explanation reasonable that the toilet was draining slowly but that she was waiting for the landlord's plumber to come to fix the faucet so she could confirm with him whether or not there was an issue with the toilet or whether it was just the style of this new toilet that appeared that it was draining slowly. It is irrelevant if the toilets were only new 10 months before the tenancy if the blockage occurred in an older pipe.

I find the evidence before me shows that the tenant's unit suffered considerable damage which took nearly two months to repair and this restricted the tenant and her son's use of the rental unit; however, the tenant did have the option of staying in a hotel and decided not to take that option and the tenants were still able to use their kitchen, one bedroom and some limited use of the master bedroom and ensuite bathroom. The landlord has an obligation to ensure the tenant has full use of her rental unit and while the toilet flood may not also be the responsibility of the landlord through improper maintenance of the building or unit the landlord's obligation lies with providing the tenant with a rental unit fit for occupation for which rent was paid. I find therefore that the tenant's claim to recover \$3,000.00 is extreme and I limit the tenant's claim to **\$1,500.00**. The tenant will receive a Monetary Order for this amount pursuant to s. 67 of the *Act*.

With regard to the tenant's claim for compensation for stress, suffering and deformation of character; I accept that the landlord called the tenant a liar and this was unprofessional, in my view, to say this to a third party even if the landlord thought the tenant had been untruthful; however, I find the tenant has insufficient evidence to show she suffered stress or that the landlord defamed the tenant's character by this one incident to another owner. The tenant has provided no doctor's reports stating she has suffered from stress and while I accept that this whole period was an unsettling and stressful time dealing with the flood and repairs the tenant has already been adequately compensated with the one month's rent as issued above to cover this. Consequently, this section of the tenant's claim for a further amount of compensation is dismissed.

With regard to the tenant's claim for excessive hydro usage, the tenant has insufficient evidence to show the over usage of hydro for the five day period the fans were running to dry the unit out. The next hydro bill has not been provided to show a comparison between the two billing periods that would enable me to make a decision on this matter. Therefore, this section of the tenant's claim is dismissed.

As the tenant's claim has some merit I find the tenant is entitled to recover the filing fee of **\$100.00** pursuant to s. 71(2) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,600.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: August 05, 2016

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Residential Tenancy Branch

