



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, ERP, RP

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; and for an Order requiring the Landlord to make repairs to the rental unit.

The Tenant stated that on November 24, 2016 her friend personally delivered the Application for Dispute Resolution and the Notice of Hearing to the Landlord. The Landlord (speaking through the interpreter) stated that these documents were given to him by a family member; although he does not recall the date he received them.

On November 24, 2016 the Tenant submitted a fire report to the Residential Tenancy Branch. The Tenant stated that this document was served with the Application for Dispute Resolution. The Landlord stated that this document was not served with the Application for Dispute Resolution. The Landlord stated that he received a copy of this document from the fire department; that he is in possession of that document; and that he consents to it being considered as evidence for these proceedings.

The Landlord stated that he submitted evidence to the Residential Tenancy Branch in regards to a direct request proceeding filed by the Landlord; however he did not submit an evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

The Landlord provided a file number for the direct request proceeding filed by the Landlord, which he believed would be considered at the same time as these proceedings. The Landlord was repeatedly told that the direct request proceeding had been considered on December 07, 2016 and would not be considered at these proceedings.

The Landlord repeatedly attempted to discuss the issue of unpaid rent but was not permitted to do so, as it is not relevant to the issues in dispute at these proceedings.

### Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to make repairs?  
Is the Tenant entitled to compensation as a result of a fire?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 15, 2016; that monthly rent of \$1,400.00 is due by the first day of each month; and that rent has not been paid for December of 2016. The parties do not agree on whether rent has been paid for periods prior to November 30, 2016.

The Landlord stated that there is a written tenancy agreement that names a male party. The Tenant stated that there is not a written tenancy agreement and that the male party referred to by the Landlord is the father of her children.

The Landlord stated that he understands the male named on the tenancy agreement, his children and a female were living in the rental unit when this tenancy began. He stated that the female in the unit may be the female who filed this Application for Dispute Resolution but he has never entered into a verbal tenancy agreement with her.

The Tenant stated that the father of her children has never lived in the rental unit; that she and her children live in the rental unit; that another female lived in the lower portion of the rental unit for a part of this tenancy; and that she entered into a verbal tenancy agreement with the Landlord for this rental unit.

The Landlord and the Tenant agree that on September 15, 2016 the Landlord issued a receipt for the security deposit and rent for September and that the receipt was made out in the name of the female who filed this Application for Dispute Resolution.

The Landlord and the Tenant agree that there was a fire in the laundry room of the rental unit on November 17, 2016. The Tenant stated that she reported the fire to the fire department and the Landlord on November 17, 2016. The Landlord stated that the

Tenant did not report the fire to him but the fire department advised him of the fire on November 17, 2016.

The Landlord and the Tenant agree that power to the rental unit was shut off on November 17, 2016 and has not yet been restored.

The Landlord and the Tenant agree that the report from the fire department, dated November 17, 2016, stipulates that an electrical inspection must be completed prior to the breaker panel being turned on and that the dryer receptacle must not be used until it has been inspected by a qualified person.

The Landlord stated that he did not receive the fire report until November 20, 2016 or November 21, 2016. He stated that on November 18, 2016, prior to receiving the fire report he had an electrician attend the rental unit for the purposes of inspecting the electrical system. He stated that he could not provide the electrician access to the rental unit as his key to the unit did not work. The Landlord speculates that the Tenant has changed the locks to the rental unit.

The Landlord stated that on the evening of November 18, 2016 he posted a note on the door of the rental unit asking the Tenant to contact him for the purpose of providing access to an electrician, which she never did. He stated that he never posted notice of his intent to enter the unit for the purpose of inspecting the electrical system.

The Tenant stated that she has never changed the locks to the rental unit; that she was home all day on November 18, 2016; the Landlord did not attend the unit on November 18, 2016; and she did not receive the note that the Landlord allegedly posted on the door on November 18, 2016.

The Tenant stated that:

- she stayed at the rental unit on the evening of November 17, 2016;
- she stayed in a hotel on November 18, 2016, November 19, 2016, and November 20, 2016;
- the city paid for the cost of her hotel on November 18, 2016, November 19, 2016, and November 20, 2016;
- after November 20, 2016 she made arrangements for her children to reside elsewhere;
- she has been staying at the rental unit, on a part-time basis, since November 21, 2016, in spite of the fact there is no power;
- between December 02, 2016 and December 13, 2016 a neighbor allowed her to run an extension cord from their home into the rental unit;
- the extension cord allowed her to heat the unit with a space heater; and
- she paid the neighbor \$100.00 for using their hydro.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, although she does not specify the amount of compensation she is claiming.

The Tenant is seeking compensation for the cost of staying in a hotel.

The Tenant is seeking compensation for the cost of food and clothing that was damaged as a result of the fire. The Tenant did not submit any receipts in support of these claims.

### Analysis

Even if I accepted the Landlord's testimony that he has a written tenancy agreement with a male with the initials "M.C." and I accepted the Tenant's testimony that "M.C." is the father of her children, I find that there is sufficient evidence to conclude that the Landlord and the Tenant entered into a verbal tenancy agreement.

In determining that there is sufficient evidence to conclude that the Landlord and the Tenant have entered into a verbal tenancy agreement, I was heavily influenced by the undisputed evidence that the Landlord issued a receipt, in the name of the female who filed this Application for Dispute Resolution, for the security deposit and rent for September. I find that this receipt strongly corroborates the Tenant's submission that she had a verbal tenancy agreement with the Landlord, as I can find no other reason to conclude why the receipt would have been issued in her name.

As a written tenancy agreement was not submitted in evidence and the Tenant stated that there is no written tenancy agreement, I find that the Landlord's testimony that he has a written tenancy agreement with a male with the initials "M.C." has limited evidentiary value. Without the benefit of viewing that document, I cannot make any substantive decisions about the validity of that tenancy agreement.

Section 32(1) of the *Residential Tenancy Act (Act)* requires landlords to 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, makes it suitable for occupation by a tenant. I find that there can be little doubt that this section requires a landlord to take whatever steps are necessary to ensure that there is power in a rental unit.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 32(1) of the *Act* as he has not restored power to the rental unit since the fire on November 17, 2016. As the parties were advised at the hearing on December 20, 2016, the Landlord is directed to immediately take whatever actions are necessary to have power restored to the unit and to ensure the dryer receptacle is safe to use as soon as possible.

To facilitate the restoration of power to the rental unit the Tenant agreed to copy her key to the rental unit and to meet the Landlord at the rental unit at 1:00 p.m. today, for the purpose of providing the Landlord with a key to the rental unit.

In adjudicating this matter I have placed no weight on the Landlord's speculation that the Tenant has changed the locks to the rental unit. I placed no weight on this speculation because there is no evidence to support that speculation or to refute the Tenant's testimony that she did not change the locks.

In adjudicating this matter I have placed no weight on the Landlord's testimony that an electrician went to the rental unit on November 18, 2016 for the purposes of inspecting the rental unit. I placed no weight on this testimony because there is no evidence to corroborate that testimony or to refute the Tenant's testimony that she was home all day on November 18, 2016 and an electrician did not attend the unit.

In adjudicating this matter I have placed no weight on the Landlord's testimony that he posted a note on the door of the rental unit on November 18, 2016 asking the Tenant to contact him for the purposes of having the unit inspected. I placed no weight on this testimony because there is no evidence to corroborate that testimony or to refute the Tenant's testimony that she did not locate that note. Given that it was in the Tenant's best interests to have power restored to the unit I find it highly unlikely that she would have ignored this request if she had received the Landlord's note.

Even if I accepted the Landlord's testimony that he attended the rental unit on November 18, 2016 and he was unable to access the rental unit, I find that he remained obligated to comply with section 32(1) of the *Act*. In the event he was unable to contact the Tenant for the purposes of accessing the rental unit I find that the Landlord should have posted notice of his intent to access the rental unit in accordance with section 29 of the *Act* and subsequently gained access to the unit with the assistance of a locksmith, if necessary.

In the unlikely event the Tenant does not provide the Landlord with a key to the rental unit at 1:00 p.m. today and/or the parties cannot agree on a time to inspect the rental unit, I order the Landlord to immediately post notice of his intent to access the rental unit in accordance with section 29 of the *Act* and access to the unit with the assistance of a locksmith, if necessary, no later than 24 hours after that notice is posted.

Section 28 of the *Act* grants tenant the right to the quiet enjoyment of their rental unit including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in

which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find that the Landlord's failure to restore power to the rental unit in a timely manner had a very significant impact on the Tenant's ability to use the rental unit for its intended purpose and that it breached her right to the quiet enjoyment of the rental unit. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant has been unable to live with her children since November 20, 2016 and she has been living in the unit, without a proper source of power, since November 20, 2016.

I find that the breach of the Tenant's right to the quiet enjoyment of the rental unit significantly reduced the value of this tenancy by \$1,300.00 per month, or \$43.33 per day, for the period between November 17, 2016 and December 20, 2016. In concluding that the value of the tenancy was reduced by \$1,300.00 I was influenced by my conclusion that without power this rental unit is nothing more than a storage unit, which typically rent for approximately \$100.00 per month.

I award the Tenant compensation of \$1,429.89 for the breach of her right to quiet enjoyment of the rental unit between November 17, 2016 and December 20, 2016, which is based on the daily reduction of \$43.33 for 33 days.

I find that the Tenant continues to be entitled to compensation for a breach of the right to quiet enjoyment of the rental unit from December 20, 2016 until such time as the tenancy ends or power is restored to the rental unit, whichever comes first. I therefore authorize the Tenant to reduce her rent payment for January of 2017 by \$43.33 for each day the rental unit is without power between the period of December 21, 2016 and December 31, 2016.

In the event power is not restored to the rental unit by December 31, 2016 I further authorize the Tenant to reduce her rent payment for February of 2017 by \$43.33 for each day the rental unit is without power in January of 2017. I further authorize the Tenant to reduce her rent in subsequent months in the same manner, until such time as power is restored to the unit.

As the parties agree that rent has not been paid for December of 2016, I find that the compensation award of \$1,429.89 shall be reduced by the rent that was due on December 01, 2016, pursuant to section 72(2)(a) of the Act. After the award of

\$1,429.89 is reduced by the monthly rent of \$1,400.00, I find that the Tenant is still entitled to compensation of \$29.89.

As the parties did not agree on whether rent is outstanding for any period prior to November 30, 2016 and outstanding rent was not an issue to be determined at these proceedings, I have not reduced the remaining compensation of \$29.89 for any other rent that may be currently overdue.

As the evidence shows that the municipality paid for her to stay in a hotel, I am unable to award her compensation for the cost of staying in a hotel.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Even if I concluded that the Tenant was entitled to compensation for the costs of food and for damage to her clothing as a result of this fire, I would find that the Tenant failed to establish the actual cost of her losses. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that establishes the value of any clothing that was damaged or the amount she spent on meals. As she failed to establish the true costs of her losses, I dismiss her claim for compensation for food and damaged clothing.

Residential Tenancy Branch Policy Guideline #16, with which I concur, reads, in part:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

It is circumstances where a tenant has been denied an essential service, such as power, for an extended period when that service could have been provided with reasonable diligence on the part of the landlord, a tenant may be entitled to compensation for aggravated damages. As the Tenant did not specifically apply for aggravated damages in her Application for Dispute Resolution I am unable to consider compensation for aggravated damages.

Conclusion

The Tenant is entitled to a monetary Order for \$29.89. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As outlined in the analysis, the Landlord is directed to immediately take whatever actions are necessary to have power restored to the unit and to ensure the dryer receptacle is safe to use as soon as is possible.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 20, 2016

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Residential Tenancy Branch