



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant's application: MNDC

Landlord's application: MNR, MNSD, FF

### Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The landlord was represented by legal counsel at the hearing. Several intended witnesses for each applicant called into the hearing. They were asked to leave the hearing until they were called upon to present evidence. During the hearing I heard the testimony of the tenant, who was questioned by landlord's counsel. I heard the landlord's testimony; he commented upon the tenant's claims and testified as to his own claims. It took more than one hour to hear the testimony of each party. I concluded the hearing without hearing evidence from the proposed witnesses for either party and I advised the parties that I would make a decision based on the evidence presented by the parties. At the hearing the tenant confirmed that he has moved out of the rental unit and the tenancy has ended. The tenant is seeking a monetary award from the landlord. The landlord is claiming compensation from the tenant for unpaid rent and other expenses.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the tenant's security deposit or should it be returned to the tenant?

### Background and Evidence

The rental property is a house in Vancouver. The rental unit is one of three rooms in the basement of the house with shared kitchen and bathroom facilities. The landlord rents the entire house from the owner of the rental property and sublets the basement unit to the tenant. There is no written tenancy agreement. The tenant testified that he met the landlord at a garage sale in September, 2015 and learned that he had a basement apartment for rent. The tenant rented a basement room in the house for \$450.00 per month. He paid the landlord the first month's rent and a \$225.00 security deposit on September 23, 2015. The tenant testified that the rental unit was very dirty, the room was not clean and there was mould. The tenant was sharing a kitchen and was occupying a room that was not intended to be used as a bedroom. The tenant testified that there have been floods in the basement and his belongings have been damaged. The tenant received a copy of a letter sent to the landlord by the owner of the rental property dated December 22, 2016. The letter stated that:

I have been notified that there is a Tenant living in the basement suite at (address of rental property), the property that you rent from me. The basement suite at (address) is not a legal basement suite and the City of Vancouver requires the suite to be vacated immediately. Anyone living in the basement suite is living there illegally and must vacate the premises immediately

The tenant testified that an inspector from the City of Vancouver has inspected the house and has pronounced the basement suite to be in unliveable condition. The tenant said there have been floods in the basement. There is a severe rat and mouse infestation because of the landlord's unhygienic living conditions in the upper portion of the house. He said the landlord is a hoarder and there is an accumulation of his goods in and around the property. There is severe mould due to a leaky roof and basement flooding. The furnace was broken and the landlord did not repair it. The tenant said that the rental unit was so unhealthy that he could not bring his two children, ages 9 and 14 to visit at the unit. The tenant said that the landlord was trying to evict him without cause, but since he filed his application, the tenant has moved out of the rental unit. The tenant said that he is now seeking a monetary award for half of the rent he has paid plus compensation for his personal property and clothing that has been damaged or destroyed by the flooding in the unit. The tenant said that his blankets, shoes, jackets and a sofa were damaged by the flooding. He claimed a total of \$875.00 for these items. The tenant claimed a refund of half the rent paid over the course of his tenancy because the rental unit was not legal to rent and was unhealthy. The tenant said that other occupants living in the basement became ill and were hospitalized with pneumonia due to the conditions in the rental property.

The landlord claimed that the tenant failed to pay rent for December. The landlord claimed the following amounts:

• Rent for December, 2016:	\$450.00
• Dispute Resolution application:	\$100.00
• Landlord's time to prepare and participate:	\$300.00
• Payment for photos submitted as evidence:	\$80.00
• Rent for January, 2017:	\$450.00
• Retain damage deposit:	\$225.00
 Total:	 \$1,605.00

The landlord submitted a copy of a 10 day Notice to End Tenancy for unpaid rent dated December 3, 2016. The landlord said that he has incurred expenses for gas, electricity, cable and internet charges, all of which are included in the tenant's rent.

The landlord said there was a flood in the basement in June, 2016 due to a broken pipe, but he said the leak was stopped in 10 to 15 minutes and the tenant's belongings were not damaged. The landlord said the tenant's pictures of the rental unit do not accurately show the condition of the unit. The landlord submitted more than 100 pictures of the rental property. There was no information on the photos to identify when they were taken.

### Analysis

I accept the tenant's testimony and supporting documents, including a letter from the owner of the rental property as confirming evidence that the basement of the rental property was never intended to be used as rental accommodation. The tenant has moved out because the owner of the property and the City of Vancouver has declared the basement suite unfit for occupancy. The tenant has not paid rent for December, but, because the rental unit was declared illegal and ordered to be vacated in the December, I find that the landlord is therefore not entitled to demand or collect rent for the unit for the month of December or for any subsequent months. The landlord's claim for a monetary award for unpaid rent for December and January is dismissed without leave to reapply as is his claim to retain the tenant's security deposit. There is no basis for the landlord's claim for his time to prepare or attend the hearing or for the cost to provide photographs; these are not recoverable costs under the *Residential Tenancy Act* and the landlord's claims for these expenses are also dismissed without leave to reapply.

Turning to the tenant's claim; he has requested payment for damaged or destroyed goods and for a refund of half the rent paid during his tenancy. Although I have accepted the tenant's testimony that the rental unit was unsuitable living accommodation and that the tenant was forced to move out of the unit, he still has the burden of proving his claims for loss and damage on a balance of probabilities. The tenant has not provided any documents to support his claims for his damaged or lost goods and I find that he has not established that he suffered those losses due to the negligence of the landlord. In the absence of sufficient proof of loss and of liability on the part of the landlord, the tenant's claim for compensation for his damaged property is dismissed without leave to reapply.

With respect to the claim for refund of rent paid for previous months of the tenancy, I find that there is no basis for an arbitrary refund of half the rent paid. If the tenant had issues with respect to his living conditions or the need for repairs during the tenancy, his remedy was to apply for a repair order and a rent reduction, but the tenancy ended before the tenant took any steps to seek a remedy and I find that there is insufficient evidence to support an award for loss of quiet enjoyment covering the entire term of the tenancy. The claim for a refund of rent is dismissed without leave to reapply. The tenant was justified in withholding rent for December and the landlord's claim for December rent has been dismissed as has his claim to retain the security deposit. Because the landlord's claim has been dismissed in its entirety, the tenant is entitled to the return of his security deposit. I grant the tenant a monetary order in the amount of \$225.00, being the security deposit paid when the tenancy started. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord's claims are dismissed without leave to reapply. The tenant's claims are dismissed as well, save and except that he has been granted a monetary award for \$225.00, being the amount of his security deposit.

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 7, 2017

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Residential Tenancy Branch

