



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hamasaki Ent. Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Landlord: O, FF

Tenants: CNR, MNSD, OLC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought to have the tenants comply with a previous order by an Arbitrator. The tenants sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her two agents and all four tenants.

At the outset of the hearing, I clarified for all parties that I had no authority to change any of the orders that were issued in a previous decision dated January 27, 2017 and that my role in this hearing was to determine if the landlord had complied with all required orders as they relate to the issues identified in each of the parties current Applications for Dispute Resolution.

In addition, I note that while the landlord's original Application sought only to have the orders of the previous decision enforced they did submit two amendments to their Application that sought monetary orders. The first amendment added a monetary claim of \$700.00 and the second amendment increased that amount to \$2,100.00. As these amendments were submitted in the correct format and prior to the hearing and because they are reasonably based on additional claims of unpaid rent due to the date of the hearing I accept these amendments.

Also at the start of the hearing I sought confirmation from the parties relating to the nature of each of the tenants' agreements for tenancy with the landlord. In the previous decision the arbitrator wrote:

"Both parties agreed to the following facts. The tenant and tenant RL moved into the rental unit on September 1, 2016. Tenant LL moved into the rental unit on September 2, 2016. Tenant JK moved into the rental unit on September 10, 2016. Each of the four tenants signed separate tenancy agreements with the landlord each for a fixed term ending on April 30, 2016, after which the four tenants may move out or sign an agreement for a new fixed term. Monthly rent in the amount of \$750.00 is payable on the first day of each month for each of the four tenants. A security deposit of \$300.00

was paid by each of the four tenants and the landlord continues to retain all of the deposits. The four tenants continue to reside in the rental unit.”

The landlord submitted that tenants LL and JK had separate and individual tenancy agreements with the landlord but that tenant RL and ST had one tenancy agreement as a joint tenancy. The tenants RL and ST could not recall having only one tenancy agreement. I allowed, with the tenants’ (RL and ST) permission, the landlord to submit a copy of the tenancy agreement. The landlord submitted this evidence by fax on the same day as the hearing.

The tenancy agreement submitted does name both RL and ST however, it indicates that each of the tenants is responsible for the payment of rent, at all material times, in the amount of \$750.00 each. From the testimony of both the landlord and the tenants RL and ST I find the practice of each party was that both RL and ST paid the landlord their rent separately throughout the whole tenancy.

As the requirement of rent is specifically assigned to each tenant having a responsibility of \$750.00 each month and the fact each tenants paid their rent individually, I find that despite the agreements set in one document the parties actually had two separate and individual tenancy agreements and tenancies.

From these findings, I noted that since each tenant had an individual tenancy agreement with the landlord, the landlord could not issue 1 Notice to End Tenancy for Unpaid Rent to all four tenants in the same document because they would each have individual responsibilities for the amounts owed which would not include any amounts that the other tenants may have owed.

As such, I advised the parties at the start of the hearing that the landlord’s Notice to End Tenancy issued to all four tenants was not a valid notice. However, each tenant confirmed that they planned to move out of the rental unit by April 30, 2017 as per their individual fixed term tenancies. After checking with each of the tenants and the landlord no one objected to the landlord receiving orders of possession effective April 30, 2017.

As the parties have agreed that the tenants will vacate at the end of April I find the tenants are no longer required to dispute it and as such I amend the tenants’ Application for Dispute Resolution to exclude the matter of cancelling the 10 Day Notice.

Also at the beginning of the hearing the tenants indicated that they had applied for their security deposit to be returned because they had no faith that the landlord would return them at the end of the tenancy. However, as the landlord has the right to retain the deposits until either the end of the tenancy or the landlord applies to retain the deposit at the end of the tenancy I found this portion of the tenants’ Application is premature.

Furthermore, as I have found that each of the tenancies was an individual agreement, each tenant must submit a separate Application for Dispute Resolution seeking return of their deposit if the landlord does not comply with her obligations to return the deposit; apply for dispute

resolution claiming against the deposits; or apply the security deposit to any outstanding monetary orders issued by an arbitrator. I refer the parties to Section 38 of the *Residential Tenancy Act (Act)*.

As a result, I amend the tenants' Application for Dispute Resolution to exclude the matter of return of the security deposits.

During the hearing the tenant RL indicated that he had evidence that he had paid the landlord with a portion of April 2017 rent. I allowed the tenant to submit this additional evidence and the landlord to submit any evidence she had to show that any payment was not received (specifically a password for the e-transfer).

I ordered each party must submit this evidence no later than the end of business on April 6, 2017. The landlord submitted her additional evidence on April 5, 2017. The tenant failed to submit any additional documentary evidence prior to the end of business on April 6, 2017.

For clarity, the only remaining issue on both Applications for Dispute Resolution is to determine whether or not the landlord is owed any rent money from any of the tenants, subject to the orders issued in the January 27, 2017 decision.

#### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to monetary orders for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*

It must also be decided if each of the tenants is entitled to an order having the landlord comply with the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

#### Background and Evidence

As noted above, each tenant had a separate tenancy agreement with the landlord for a monthly rent of \$750.00 each (at all material times) and each tenant has indicated they will vacate their respective rental units effective April 30, 2017.

In the January 27, 2017 decision the arbitrator made the following awards to each tenant:

Tenant	Compensation – September 2016 - February 28, 2016	Rent Reduction – effective March 1, 2017* until ordered repairs are completed
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<b>Tenant RL</b>	\$1,270.00	\$380.00 per month
<b>Tenant ST</b>	\$1,270.00	\$380.00 per month
<b>Tenant LL</b>	\$1,120.00	\$280.00 per month
<b>Tenant JK</b>	\$1,120.00	\$280.00 per month

\*The rent reductions beginning March 1, 2017 were granted to each of the tenants until the landlord had complied with each of the repair orders in that decision – those orders are listed below.

<b>Issues</b>	<b>Orders</b>
<b>Rat and Mice</b>	<p>I order that the monthly rent for EACH of the four tenants be reduced by \$200.00 each month, effective on March 1, 2017 until such time as the following repairs are made and the deficiencies are corrected by the landlord, at the landlord's own cost:</p> <ol style="list-style-type: none"> <li>1. a certified, licensed pest control professional has inspected the entire rental property for mice and rats;</li> <li>2. the mice and rats at the entire rental property are eliminated by a certified, licensed pest control professional;</li> <li>3. a signed, written report is provided to the landlord and the four tenants by a certified, licensed pest control professional including the minimum following elements: <ol style="list-style-type: none"> <li>a. the date of the report, the name of the pest control professional, and the education, license(s) and certification(s) held by the pest control professional;</li> <li>b. what areas were inspected at the rental property and the date of such inspections;</li> <li>c. what findings were made upon inspection regarding mice and rats at the rental property;</li> <li>d. when and what specific pest control treatment(s) were used to eradicate the mice and rats at the rental property;</li> <li>e. a conclusive finding that there is no current activity of mice and rats at the entire rental property and that all current known mice and rats have been exterminated at the entire rental property;</li> <li>f. what specific pest control treatment(s) and/or other measure(s) are or will be used in the future to prevent an infestation of mice and rats;</li> <li>g. the date and proof of payment by the landlord to the certified, licensed pest control professional for the above services.</li> </ol> </li> </ol>
<b>Stove</b>	<p>I order that the monthly rent for EACH of the four tenants be reduced by \$40.00 each month, effective on March 1, 2017 until such time as the following repairs are made and the deficiencies are corrected by the landlord, at the landlord's own cost:</p> <ol style="list-style-type: none"> <li>1. the landlord provides a new or used stove in proper working order to the tenants for their use at the rental unit, of adequate and comparable size to replace the broken large conventional stove and oven that the tenants first had in the rental unit when they moved in;</li> <li>2. the landlord provides a signed, written declaration from a certified,</li> </ol>

	<p>licensed technician to the four tenants, that both the stove and oven are in proper working order and are safe to use at the rental unit;</p> <p>3. the landlord provides the four tenants with the date and proof of payment for the new or used stove and oven as well as for the services of the certified, licensed technician.</p>
<b>Oven</b>	<p>I order that the monthly rent for EACH of the four tenants be reduced by \$40.00 each month, effective on March 1, 2017 until such time as the following repairs are made and the deficiencies are corrected by the landlord, at the landlord's own cost:</p> <ol style="list-style-type: none"> <li>1. the landlord provides a new or used oven in proper working order to the tenants for their use at the rental unit, of adequate and comparable size to replace the broken large conventional stove and oven that the tenants first had in the rental unit when they moved in;</li> <li>2. the landlord provides a signed, written declaration from a certified, licensed technician to the four tenants, that both the stove and oven are in proper working order and are safe to use at the rental unit;</li> <li>3. the landlord provides the four tenants with the date and proof of payment for the new or used stove and oven as well as for the services of the certified, licensed technician.</li> </ol>
<b>Water Damage/Roof Repairs – for tenants RL and ST only</b>	<p>I order that the monthly rent for each of the tenant (ST) and tenant RL only, be reduced by \$100.00 each month, effective on March 1, 2017 until such time as the following repairs are made and the deficiencies are corrected by the landlord, at the landlord's own cost:</p> <ol style="list-style-type: none"> <li>1. a certified, licensed technician has inspected the entire rental unit for water leaks and water damage;</li> <li>2. all areas with water leaks and water damage are repaired and corrected by a certified, licensed technician(s);</li> <li>3. a signed, written report is provided to the landlord and the four tenants by a certified, licensed technician(s) including the minimum following elements: <ol style="list-style-type: none"> <li>a. the date of the report, the name of the technician(s), and the education, license(s) and certification(s) held by the technician;</li> <li>b. what areas were inspected at the rental unit and the date of such inspections;</li> <li>c. what findings were made upon inspection regarding water leaks and water damage at the rental unit;</li> <li>d. what repairs and measures were taken to correct the water leaks and water damage at the rental unit;</li> <li>e. a conclusive finding that there are no current water leaks or water damage at the rental unit and that all water leaks and water damage have been remediated;</li> <li>f. a declaration that the drywall has been adequately repaired and the carpet has been adequately cleaned or replaced, the broken window seal is fixed and the glass door is sealed, if necessary, in the tenant and tenant RL's bedroom at the rental unit or the reason why such repairs, cleaning or replacement is not necessary;</li> <li>g. the date and proof of payment by the landlord to the certified,</li> </ol> </li> </ol>

	licensed technician(s) for the above services.
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The landlord testified that all of the requirements set forth each order were completed by the following dates:

Order	Date completed
<b>Pest Control</b>	March 9, 2017
<b>Stove</b>	March 9, 2017
<b>Oven</b>	March 9, 2017
<b>Water damage/roof</b>	March 19, 2017

In support of these submissions the landlord has provided the following relevant documents:

- A copy of a Service Work Order for pest control;
- A copy of a Ministry of Environment certificate for the pest control technician;
- A copy of an emailed report from the technician dated February 7, 2017 detailing all required information to respond to the pest control orders listed above;
- A copy of a receipt from a big box store confirming purchase of a new stove/oven to be delivered by February 17, 2017;
- A copy of the gas contractor's license;
- A copy of the invoice from the gas contractor, in the amount of \$399.50 including removal of old stove; installation of new stove; test gas lines and stove functions;
- A copy of a restoration report dated March 6, 2017 indicating a March 10, 2017 completion date. The report indicates the source of water infiltration was fixed in January 2017 and that all removal of damaged material had been removed but due to refusal of the tenants to allow access to the rental unit on March 3 and 4 2017 the completion of the work would be delayed. The report indicates no flooring replacements required. There is no indication in this report about repairs to any windows or glass doors; and
- Certifications for technicians completing the restoration work.

The landlord submits the tenants have paid the following amounts of rent to the landlord for the months of February, March, and April 2017: tenant RL \$0.00; tenant ST \$240.00; tenant LL \$990.00; and tenant JK \$890.00.

Tenant RL testified that he provided the landlord with an e-transfer for \$240.00 and that it was debited from his account on April 1, 2017. The landlord submitted that they did receive notification of the e-transfer email but did not receive any indication as to what the password was so they could not receive the payment. The landlord testified that she sent the tenant an email asking for the password.

The tenant RL submitted that they always used the same password each month since the start of the tenancy so he had not needed to provide a separate notification of what the password was. RL submitted that he could provide documentary evidence from his bank that the payment

had been debited from his account. He also testified that he had not received any email communication from the landlord asking for a password.

I allowed both parties to submit additional evidence regarding this issue as noted above. In the landlord's evidence she submitted a copy of an email dated April 1, 2017 from the landlord to the tenant RL stating: "There is no security question online banking. Could you please send me again with security question?" [reproduced as written]. As noted above, the tenant RL did not submit any additional evidence for consideration.

The tenants submit that the landlords have failed, to the date of this hearing, to comply with all of the above orders in the following ways:

- Pest Control – the tenants submit they received the report on March 2, 2017 but that structural repairs recommended were not made; and the landlord has not provided proof of payment;
- Stove/Oven – while the tenants acknowledge the replacement was installed in February 2017 the landlord did not provide a report that the stove/oven is working properly;
- Water damage – the tenants submit that the landlord has not provided any confirmation that the entire residential property was inspected for any other leaks; that the carpets had not been adequately cleaned or replaced; and that no work has been completed on the window or the glass door.

All tenants submit that they do not believe that they owe the landlord any rent monies at all for the period of February, March and April 2017.

### Analysis

In the case before me, I accept from the submissions of all parties and the January 27, 2017 that the rent each tenant pays, according to the tenancy agreements, is \$750.00 per month. As a result, I find that for the period of February, March, and April 2017 each of the tenants, prior to the January 27, 2017 decision would have been required to pay the landlord \$2,250.00,

I also acknowledge, as per the January 27, 2017 decision that the tenants RL and ST were allowed to deduct \$1,270.00 from rent payments and the tenants LL and JK were allowed to deduct \$1,120.00 from future rent payments. As a result, for the above noted period the amount owed by each of the tenants for rent after these deductions was reduced to \$980.00 for tenants RL and ST and to \$1,130.00 for tenants LL and JK.

I find that any further deductions resulting from the January 27, 2017 decision would be allowed only if the landlord has failed to comply with any of the specific orders by the time that rent was due. I also note that these further deductions include: \$200.00 per month for the orders related to pest control; \$40.00 per month for replacement stove; \$40.00 per month for replacement oven; and for tenants RL and ST and additional \$100.00 per month for the water damage.

The decision relied upon Section 32 of the *Act* to make the required repair orders and allowed for each of the parties to have an opportunity to file an Application for Dispute Resolution to determine if the repairs orders were satisfied and/or when the rent reductions should cease.

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.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

In regard to the pest control, I note that despite the recommendations of the pest control technician that structural work was required to prevent further infiltrations, the January 27, 2017 order regarding pest control does not require the landlord to follow any recommendations made by the technician.

While I accept, in the absence of any dispute from the landlord, that the landlord did not provide "the date and proof of payment by the landlord to the certified licensed pest control professional for the above services, I find that whether or not the landlord provided confirmation of payment has no bearing on whether the landlord followed the orders of the previous arbitrator to complete the required repairs or the landlord has failed to comply with their obligations under Section 32 of the *Act*.

Therefore, I am satisfied that as of March 9, 2016 the landlord has substantively complied with all required components related to the January 27, 2017 orders regarding pest control. As a result, I find the tenants are entitled to apply a \$200.00 rent reduction, as per the January 27, 2017 decision, for the month of March 2017 only, as completion occurred after the day in March 2017 that rent was due, but before April 2017 rent was due.

In regard to the orders to replace the stove and oven, I accept that the stove/oven was installed by the end of February 2017. I also accept the landlord's undisputed submissions that they provided the tenants with a copy of the receipt for the purchase of the new stove/oven from a big box store by March 9, 2017.

From the submissions of both parties I accept that the landlord has not provided any report to the tenants that stove/oven was working properly. However, I find the fact the landlord purchased a new stove/fridge from a reputable major big box store and has provided this evidence to the tenants satisfies the need to confirm that the new stove/oven is, on a balance of probabilities, in working order.



Therefore, I am satisfied that as of March 9, 2016 the landlord has substantively complied with all required components related to the January 27, 2017 orders regarding replacement of the stove and oven. As a result, I find the tenants are entitled to apply a \$40.00 rent reduction for the stove and a \$40.00 rent reduction for the oven, as per the January 27, 2017 decision, for the month of March 2017 only, as completion occurred after the day in March 2017 that rent was due, but before April 2017 rent was due.

Finally, and regardless of any other issue, I find the landlord has failed to provide any evidence regarding the completion of the ordered repairs to the seal of the window and to ensure the glass door was sealed in relation to the water damage affecting only tenants RL and ST. As a result, I find the landlord has not complied with all the required repairs ordered in relation to water damage in this part of the January 27, 2017 decision. As such, I find the tenants RL and ST are entitled to the rent reduction of \$100.00 for both the months of March and April 2017.

As a result of the above findings, I further find, the tenants are entitled to deduct the following amounts from the rent owed to the landlord for the months of February, March, and April, 2017:

<b>Tenant</b>	<b>Rent Owed</b>	<b>Deduction to Feb 28, 2017</b>	<b>Rent Reduction for March 2017</b>	<b>Rent Reduction for April 2017</b>	<b>Amount owed to landlord</b>
<b>RL</b>	\$2,250.00	\$1,270.00	\$380.00	\$100.00	\$500.00
<b>ST</b>	\$2,250.00	\$1,270.00	\$380.00	\$100.00	\$500.00
<b>LL</b>	\$2,250.00	\$1,120.00	\$280.00	\$0.00	\$850.00
<b>JK</b>	\$2,250.00	\$1,120.00	\$280.00	\$0.00	\$850.00

In regard to the amount of money received from the tenants ST, LL, and JK for rent for all material times, I find that these tenants did not dispute the amounts paid as reported to this hearing by the landlord. As such, I accept that tenant ST paid the landlord \$240.00; tenant LL paid the landlord \$990.00; and tenant JK paid the landlord \$890.00.

Based on my findings above, I make the following findings:

- Tenant ST owes the landlord the amount of \$260.00;
- The landlord owes tenant LL the amount of \$140.00; and
- The landlord owes tenant JK the amount of \$40.00.

And finally, in regard to tenant RL and the amount of rent he has or has not paid to the landlord for the material times, I find the tenant has failed to provide any additional evidence confirming his payment of rent to the landlord on April 1, 2017. As a result and in conjunction with the landlord's additional evidence of the email requesting a security question, I find the landlord has established, on a balance of probabilities, the tenant RL failed to make a payment of \$240.00 on April 1, 2017, for rent.

Therefore, I find the tenant currently owes the landlord \$500.00 as calculated in the table above.

As each of the parties was at least partially successful and each has claimed to recover their respective filing fees, I would award the same amounts to each party and as such, I find the award is not necessary, as one will cancel out the other.

### Conclusion

By agreement of all parties I grant the landlord orders of possession in respect of each tenancy effective **April 30, 2017 after service on each respective tenant**. Each order names the specific tenant it applies and must be served on that tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order against tenant RL in the amount of **\$500.00** comprised of rent owed.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order against tenant ST in the amount of \$260.00 comprised of rent owed.

These orders must be served on each respective tenant. If the respective tenant fails to comply with the specific order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I find the tenant LL is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order against the landlord in the amount of \$140.00 comprised of a rent overpayment.

I find the tenant JK is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order against the landlord in the amount of \$40.00 comprised of a rent overpayment.

These orders must be served on the landlord by each respective tenant. If the landlord fails to comply with the specific order the respective tenant may file the order in the Provincial Court (Small Claims) and be enforced 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: April 07, 2017

