



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0821149 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes OPC, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a 1 Month Notice to End Tenancy for cause, a monetary order for loss of rent, for compensation under the Act and the tenancy agreement for damage and cleaning to the rental unit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The Tenant was represented by an Advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to ask questions of the other party about their evidence, and make submissions to me. The parties agreed that they had exchanged evidence.

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.

### Preliminary Matters

As the Tenant moved out of the rental unit on March 28, 2017, the Landlord was no longer requesting an order of possession. It was explained to the parties that the tenancy ended due to the Tenant accepting the 1 Month Notice to End Tenancy and moving out two days prior to the effective date on the Notice of March 31, 2017. The Tenant had not disputed the 1 Month Notice to End Tenancy.

The Advocate suggested that the Landlord should provide the Tenant with one month of rent in compensation because in some of the correspondence between the parties it appeared the Landlord wanted the rental unit returned vacant in order to make repairs. I explained that the Tenant was not issued a 2 Month Notice to End Tenancy for the Landlord's use, but rather, the Tenant was issued a 1 Month Notice to End Tenancy for cause and did not dispute it. Therefore, the tenancy ended under the 1 Month Notice and the Tenant was not entitled to any compensation for vacating the rental unit.

If the Tenant did not want to vacate the rental unit she should have disputed the 1 Month Notice. In any event, as described below, I find the Landlord had cause to end the tenancy as the Tenant put the property at significant risk.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began in April of 2016, with the parties entering into a written tenancy agreement. The monthly rent was \$500.00 per month and the Tenant paid the Landlord a \$250.00 security deposit which the Landlord still holds. The Tenant also paid a \$100.00 key deposit, which the Landlord has not returned despite the fact the Tenant returned the keys at the end of the tenancy.

The rental unit is an apartment in a residential building.

The Tenant vacated the subject rental unit on or about March 28, 2017, when the move out condition inspection report was performed.

The Landlord has incurred costs to repair the rental unit due to the condition it was left in by the Tenant. The Landlord is also claiming for a loss of rent as they were unable to rent it until they had repaired the damage they allege the Tenant caused for 15 days after the tenancy. The Landlord is claiming for a half month of lost rent.

The Agent for the Landlord testified that the Tenant went away from the rental unit on or about December 28, 2016, and when she left the rental unit she turned off the heat to save money on her hydro bill.

Both parties agree that the Tenant turned her heat off when she left the rental unit. However, the Tenant testified she was away from December 21 to 28, 2016, to visit a relative for Christmas.

The Agent for the Landlord testified that several people told the Tenant not to turn her heat off. In evidence the Landlord submitted a letter from a third party who lives in a rental unit in the same building. The third party states they told the Tenant several times not to turn off her heat when she left the building.

When the Tenant returned to the rental unit there was an ice buildup on her balcony doors. She turned up the heat and when she took a shower the water leaked into the rental unit and into the unit below.

The Agent for the Landlord testified he was not informed about the leak until late January or early February 2017. He advised the Tenant not to take showers, and the Tenant appears to have used a neighbour's shower on occasion.

The Landlord claims that the lack of heat in the rental unit caused the pipes to freeze and to leak. The Landlord claims for these and other repairs of the rental unit as follows:

a.	Loss of rent for ½ month due to repairs	\$250.00
b.	Light bulb for bathroom and screws for closet door	\$3.00
c.	Repair cigarette burns in carpet	\$40.00
d.	Water leak repairs	\$109.76
e.	Labour for repairs 5.5 hrs @ \$20.00 per hour	\$110.00
f.	Shower seal	\$5.00
g.	Supplies	\$15.00
h.	Repair ceiling in unit below	\$25.00
i.	Filing fee	\$100.00
	<b>Total claimed</b>	<b>\$657.76</b>

The Landlord is claiming for lost rent of \$250.00 rent as they were unable to rent the unit for 15 days after the tenancy ended.

The Agent testified that the Tenant failed to replace a burnt out lightbulb. The Agent also testified that he had to replace screws in the closet door.

The Advocate for the Tenant, who attended at the move out inspection, testified that she offered to screw the door back in place and was told by someone to not worry about it.

The Agent testified that it cost \$40.00 to repair the carpet due to cigarette burns. The Agent referred to the incoming condition inspection report which did not indicate cigarette burns on the carpet. He explained the carpet had some stains, which was indicated on the condition inspection report, but no cigarette burns at the start of the tenancy were in the carpet.

The Tenant argued that there were burns on the carpet when she moved in. She testified she did not smoke in the rental unit, but she had an ashtray on the balcony for friends who smoked and visited her.

The Agent testified that due to the lack of heat in the rental unit the pipes froze in the bathroom and then leaked whenever the Tenant took a shower. He testified that the Tenant did not report the leaks to him for some time after she had returned home around Christmas. He testified he gave her an odour destroyer to spray on the carpets as they were smelly from being damp due to the leaking. There was also mold around the balcony doors due to the moisture from the leak. He told the Tenant not to use the shower but apparently she could use the tub, or a neighbour's shower. He then issued the 1 Month Notice for cause.

The Tenant testified that when she left for her Christmas visit she gave the keys to the rental unit to a neighbor who was supposed to look after the rental unit. She thought they would turn on the heat if it got too cold. The Tenant testified that the neighbor borrowed DVDs and took food from her without permission. She told the neighbor to look after the place and was surprised they did not turn on the heat.

The Tenant testified that when she returned to the rental unit she took two showers but then was told not to use the shower anymore due to the leaks.

The Advocate for the Tenant testified that she had an email from February 2, 2017, from another worker, explaining the Tenant was not able to use her shower. There was another email around February 9, 2017, explaining the condition of the rental unit was poor and that the shower was not fixed and it was leaking in the rental unit. The email suggested they contact the Landlord and ask to have the repairs made right away.

The parties gave different evidence as to the location of the rental unit in the building. The Agent for the Landlord testified that there was an entire exposed wall for the rental unit. The Advocate for the Tenant testified the rental unit had neighbouring units on both sides and therefore, there should have been enough heat to protect the subject rental unit from freezing.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities, which means it is more likely than not that the facts occurred as claimed.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then

provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Furthermore, under section 37 of the Act, when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find that on a balance of probabilities the leak in the rental unit was caused by the Tenant shutting off the heat and this caused the pipes to leak, damaging the rental unit and causing some losses to the Landlord. I find this is a breach of section 37 of the Act by the Tenant as she caused damage beyond reasonable wear and tear, and failed to make these repairs herself.

The Tenant is responsible for the rental unit while she was in possession of it. Here she left the rental unit without heat in the middle of winter. While she asked a friend to look after it for her, she did not leave the heat on herself. It is more likely than not that the pipes froze due to a lack of heat and caused the leak to occur. Therefore, the Tenant is responsible for the costs to repair that damage.

Therefore, I award the Landlord **\$109.76** for the plumbing, **\$110.00** for labour, **\$5.00** to seal the shower, **\$15.00** for other materials, and **\$25.00** to repair the ceiling in the unit below.

As for the cigarette burns I note that under section 21 of the regulations to the Act, a condition inspection report completed in accordance with the regulation is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Here I find the incoming report did not note any cigarette burns and the Tenant signed that report as to the condition of the rental unit at the start of the tenancy. The burns are recorded on the outgoing condition inspection report and agreed to by the Tenant. I find the Tenant did not have a preponderance of evidence to prove that the cigarette burns were there before she moved in. Therefore, I also award the Landlord **\$40.00** for carpet repairs.

I also allow the Landlord **\$3.00** for the lightbulb and screws. The Tenant should have replaced the bulb and had the screws put back in.

Therefore, I allow the Landlord **\$307.76** for the above claims.

However, I do not allow the Landlord the \$250.00 claimed for the half month of rent. I find the Landlord could have made these repairs prior to the end of the month of March, as the evidence was that the Tenant was in and out of the rental unit and had alternate facilities for showering available. The Landlord knew of these leaks by the early part of February of 2017. They did not have to wait until the Tenant vacated the rental unit to make these repairs. This leads me to find the Landlord did not minimize their losses as required under section 7(2) of the Act, which sets out:

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Under section 67 I find that the Landlord has established a total monetary claim of **\$407.76** comprised of the above described amounts plus the \$100.00 fee paid for this application.

I order that the Landlord retain the deposit and interest of **\$250.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$157.76**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Lastly, I note the Landlord must return the \$100.00 key deposit to the Tenant. The Landlord was not able to retain this deposit as the Tenant returned the keys. The Landlord is required to abide by section 6 of the regulation to the Act, which also explains the Landlord is not able to charge such an amount if this was the only means of access to the property by the Tenant.

Therefore, I have granted a monetary order to the Tenant for this amount, which must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

It is open to the parties to negotiate a set off for this amount against the amount owed by the Tenant and the Landlord to each other.

Conclusion

The Tenant was in breach of the Act and the Landlord had cause to end the tenancy as they did. The Tenant was responsible for the damage to the rental unit and the Landlord has been awarded for those losses. However, the Landlord failed to mitigate their loss and they are not entitled to recover the half month of rent lost.

The Landlord may keep the security deposit in partial satisfaction of the claims and is granted a monetary order for the balance due.

The Landlord should not have kept the key deposit and the Tenant is granted a monetary order for that amount.

It is open to the parties to arrange for a set off of the monetary orders they have each received.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 17, 2017

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Residential Tenancy Branch