



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. This matter began on April 3, 2017 but did not complete. The hearing proceeded and completed on this date.

### Issue to be Decided

Is the tenant entitled to compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background, Evidence

The tenants' testimony is as follows. The tenancy began on May 1, 2014 and ended on September 30, 2014. The tenants were obligated to pay \$2400.00 per month in rent. The issue of the security deposit has already been dealt with in a separate hearing. The tenant testified that subject property was a construction site from almost the entirety of the tenancy. The tenant testified that if the landlord had been truthful, all of this could have been avoided. The tenant testified that the landlord told her that some repairs

were going to be conducted on the property that would take about 2-3 weeks to complete.

The tenant testified that it took four months to complete the repairs. The tenant testified that because of the ongoing repairs she seeks compensation for loss of use of the property and loss of quiet enjoyment. The tenant testified that she also seeks the recovery of 10% of her hydro costs for the amount the workmen used in conducting repairs. The tenant testified that because of the ongoing situation and the landlords' refusal to allow her a sub tenant, she feels she was forced to move and that she wishes to be compensated for her moving costs. The tenant testified that because she had to move, she lost out on perspective clients for her business and seeks compensation for those losses. The tenant testified that she should be entitled to more than she claimed but wished to be fair and reasonable.

The tenant is applying for the following:

1.	BC Hydro September 11-30, 2014	49.92
2.	BC Hydro August 12- September 10, 2014	73.88
3.	BC Hydro July 11- August 11, 2014	93.38
4.	BC Hydro May 1- July 10	263.61
5.	BC Hydro – Landlords Use	72.11
6.	Xpress Moving September 30, 2014	661.50
7.	Xpress Moving October 1, 2014	483.00
8.	TSI Travel	2500.00
9.	Xpress Moving SEO Campaign Monthly	5000.00
10.	Loss of Use	4800.00
11.	Filing Fee	100.00
	<b>Total</b>	<b>\$14,097.00</b>

The landlord provided the following testimony along with her counsels' submissions. Counsel submitted that the tenants claim lacked any merit and that the matter should be dismissed in its entirety. Counsel submitted that even if a finding were made in favour of the tenant, her claims should be considered grossly exaggerated and that only a very nominal amount should be granted. SS disputed the tenants' claims. SS testified that she did everything she could to work with the tenant. SS testified that their relationship was fine until the tenants' roommate moved out and caused financial strain to the tenant. SS testified that the tenant was kept informed of the repairs and it was explained to her that the work had become more involved than first thought which required it to

become an insurance claim. SS testified that the tenant had full use of the patio and the inconvenience of the work to her was minimal. SS testified that she addressed repairs as they were brought to her attention. SS testified that the tenant wasn't forced to move, but the contrary; SS testified that she offered to help the tenant find a new roommate. Counsel submits that the tenants own documentation clearly favours the landlord and that the tenants' claim should be dismissed as it lacks the detailed information required to be successful. Counsel submits that the tenant was the one that ended the tenancy and is subject to her own actions.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witness LM, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

### BC HYDRO

The tenant testified that due to the landlords ongoing repairs that was several months in duration, she feels that she should be compensated for the electricity used by the tradesman. The tenant submits that 10% of her electricity bills from May 2016-September 2016 are appropriate. The tenant seeks \$552.90. The landlord disputes this claim. The landlord testified that the repairs did not take as long as alleged by the tenant and that they have not provided sufficient information to be granted compensation. The tenant has not provided a detailed and accurate account of the timeline of the work. The tenant often stated that "there was so much going on, I'm not sure". I found the tenants testimony to be unreliable. The tenant has failed to provide a clear amount of loss incurred as alleged. In addition the tenant has not provided sufficient evidence that she

attempted to mitigate these costs. Based on the insufficient evidence before me and the tenants' unreliable testimony, I dismiss this portion of the tenants claim.

### Moving Costs

The tenant testified that she was "forced" to move out of the property due to the landlord not agreeing to allow the subject tenant to obtain a sub-tenant and the loss of use of the patio deck. The tenant seeks \$1144.50. Counsel submitted that the tenant moved of her own volition and that she was not forced to move. After considering the testimony of the parties and reviewing the documentation, I find that the tenant did move of her own accord. The tenant has not provided sufficient evidence that the landlord acted recklessly or negligently in contravention of the Act to "force" her to move, accordingly; I dismiss this portion of the tenants claim.

### TSI Travel and Xpress Moving

The tenant testified that "because I was forced to move, I had so much going on all at once that it affected my business and caused me to lose money" The tenant testified that she was under significant stress at the time that caused her to lose \$7500.00 in contracts. Counsel submits that the tenant has not met the burden outlined in section 67 of the Act to prove this claim. Counsel further submits that this claim can be directly linked to the moving costs and that it was the tenants' choice to pick the end date and that whatever personal issues were affected by her move, can be attributed to her own actions. I find that the tenant did not provide sufficient evidence to illustrate that the landlords' were in any way in contravention of the Act whether it be by recklessness or negligence that caused her to lose out on the contracts and accordingly; I dismiss this portion of the tenants claim.

### Loss of Use and Quiet Enjoyment

The tenant testified that she seeks \$4800.00 in compensation for the loss of use of the patio deck and pool. The tenant testified that the area was essentially a construction zone during her time residing at this property. The tenant testified that it was not only a loss to her but unsafe as railings were missing and materials were strewn about. The landlords witness LM gave testimony that the tenant was not affected by the construction and regularly enjoyed the area. LM testified that the tenant had people over on a regular basis to use the patio deck. The landlord testified that the pool was operational but the tenant failed to use it properly and didn't remedy the issue. Counsel submits that the tenants claim lacks merit and that she should not be entitled to any compensation. The tenant has failed to satisfy me that she has provided sufficient

evidence to satisfy me that the landlord in contravention of the Act and, did not provide the actual amount of loss incurred by the tenant, and whether she took sufficient steps to mitigate the loss as listed above and as required under section 67 of the Act. Based on the insufficient evidence before me and on a balance of probabilities, I must dismiss this application in its entirety.

### Conclusion

The tenant's application is dismissed in its entirety.

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 3, 2017

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Residential Tenancy Branch