



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, FF

### Introduction

The tenants apply to recover the cost of hotel accommodation incurred as the result of a failure in the water supply to their rental unit. Though the tenants' Monetary Order Worksheet does not disclose it, they also seek a \$25.00 late rent fee charged by the landlord.

The tenants have also applied, by amendment to their application, to cancel a ten day Notice to End Tenancy for unpaid December rent. As the tenancy has ended that application is no longer an issue.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing. The tenants were represented by an agent, Mr. S.A.

The style of cause has been amended to show the landlord's full name. The two applicants, D.A. and R.A. are the two young children of the tenants Mr. A.A. and Ms. A.A. are were not tenants of the landlord.

### Issue(s) to be Decided

Were the tenants warranted in taking up alternate accommodation for four days and if so, was the landlord responsible?

### Background and Evidence

The rental unit is a two bedroom apartment in a 44 unit, four floor condominium apartment building.

The landlord represents the owner of this rental unit and is also the strata manager of the building.

The tenancy started January 1, 2016, though the tenants moved in a few days early. The rent was \$1200.00 per month, due on the first of each month. The tenants paid a \$600.00 security deposit.

The tenancy ended and the tenants vacated on December 31, 2017. By agreement the landlord has withheld \$483.00 of the deposit money, pending determination of this dispute.

It is the tenants' evidence that in late November 2017 the landlord severely restricted the water supply to the rental unit. Documents show that use of the taps, including the toilet was restricted in all units starting November 22. Water was turned on for one or two hour periods on the following days and the landlord provided occupants in the building with jugs of water to alleviate the inconvenience.

The tenants have two children under the age of four. One is a newborn child. Access to water and particularly to the bathroom was very important to them. On November 24 they queried the landlord about the water supply, indicating that their unit had been without water for four days and their daughters needed the bathroom almost every hour.

The tenants had been using the washroom at a nearby doughnut shop during that time.

The tenants write:

**5. The URGENT ISSUE NOW** is about the payment of December 2017. It was impossible to live in this apartment in the last ten days of November 2017 due to the lack of the services. **We had almost no water for 4-5 days and sometimes electricity** because they were shut off. The water was provided for an hour **ONLY** a day. It was at the end of the nights which was difficult to schedule ourselves in using the washroom especially with a new baby born, four years kid and preparing ourselves to travel internationally.

The tenants took a hotel room for the nights of November 24 to 28. They seek to recover the \$483.00 cost.

Ms. F.T. for the landlord forthrightly described the problem the landlord encountered in November. Though the building was relatively new, constructed in 1998 or 1999, the water main located under the main floor had cracked. She says that either the wrong fitting had been used or the pipe had been installed incorrectly. It became a major repair job, getting at the pipe and conducting repairs.

Ms. F.T. did not dispute the tenants' description of their experience.

### Analysis

The question is; who bears the burden of the loss?

If the lack of water to the tenants' rental unit was caused by an unrelated third party then each must bear their own loss. For example, if a City water main had failed and cut off water to the building, it would not have been the fault of the landlord or the tenant and they would have had to bear their own loss.

Similarly, if the landlord's portion of the water pipe had failed as a result of seismic activity or perhaps even old age, occupants in the building would have had to put up with the inconvenience caused by its repair.

However, in this case the lack of water was caused by a defect in the installation of a relatively new water line. That is the responsibility of the building owner, represented here by the landlord. The owner may well have recourse to the designer or builder of the building and they in turn may have recourse to a subcontractor, but at the front end of line, the landlord must bear responsibility to occupants, including these tenants.

I find that the landlord is responsible for the inconvenience caused to the applicant tenants resulting from the discontinuance of a water supply to their rental unit. The tenants, in the circumstances they faced with two young children, acted reasonably and were justified in taking a hotel room for the four days they did. I consider \$483.00 to have been a reasonable cost and I award that amount to the tenant.

The tenants have not claimed the \$25.00 late fee in their application. I would not have awarded it to them in any event. Section 26 of the *Residential Tenancy Act*, is clear: a tenant must pay rent even when the tenant has a claim against the landlord. These

tenants were not entitled to unilaterally offset their hotel bill against their December rent. The landlord was entitled to charge a late fee.

### Conclusion

The tenants are entitled to recover \$483.00 as claimed, plus the \$100.00 filing fee for this application. They will have a monetary order against the landlord in the amount of \$583.00.

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: January 16, 2018

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Residential Tenancy Branch