



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding JACQUELINE CHEUNG C/O URBAN PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property and to recover the filing fee for this proceeding.

The Landlord's Counsel said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 11, 2018. The Landlord submitted Canada Post tracking information and receipts in support of the service of documents. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damage to the unit, site or property and if so how much?

### Background and Evidence

This tenancy started on November 1, 2006 as a fixed term tenancy with an expiry date of October 31, 2006 and then continued on a month to month basis. Rent is \$2,481.00 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$1,100.00 at the start of the tenancy.

The Landlord's Counsel said they have submitted an extensive brief and evidence package so she did not want to restate all the evidence, but would focus on the main arguments and she trusts the Arbitrator will review all the evidence submitted. Counsel continued to say that the main point is the Tenants installed a water filtration system into the rental unit without the permission of the Landlord and the water filtration system failed on October 10, 2017 and caused water damage to the rental unit.

Counsel cited section 32 of the Act which says “32 (3) A tenant of a rental unit 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 residential property by the tenant.”

Counsel indicated the Tenants are responsible for the operation of the water filtration system and must repair any damage caused by the failure of that system whether it is due to a manufactured defect, installation issue or an operational problem.

Counsel continued to say the Landlord called in a Restoration company and a Plumbing company to make emergency repairs and general repairs to the unit to bring the unit back to its original state. Counsel said the Landlord acted reasonable, the Landlord mitigated the loss as best as they could and the Landlord acted in a timely manner.

Further Counsel said the Landlord has applied for compensation as a result of the water damage to the rental unit. The expenses to repair the unit have been paid by the Landlord directly, as the Landlord was denied an insurance claim for this damage. Counsel said the Landlord’s evidence package has photographs, statements from the restoration company and paid receipts for the repairs done to the rental unit. Counsel said the Landlord is applying for the following:

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Emergency repairs (Initial response of the Restoration Company (first invoice)	\$ 3,837.65
Plumbing Inspection (Initial investigation)	\$ 154.35
Water damage repairs (Restoration Company work to restore the unit (second invoice)	\$12, 663.88
Recover filing fee for the application	<u>\$ 100.00</u>
Total Claim	<u>\$16,755.88</u>

The Tenant said this is the first time they have been in this position and they feel there is an uneven balance of power as the Landlord has a lawyer and the Tenants are representing themselves. The Tenant continued to say that their insurance company wrote a letter on their behalf to the Landlord’s Counsel stating the Tenants have adequate tenant insurance, but the burden of proof is on the Landlord to show negligence by the Tenants. The Tenant said they have not been negligent. Further the letter says the Tenants had verbal approval to install the water filtration system from the previous landlord and the Insurance Company’s position is that permission was not needed as the water system is not a major appliance. The letter continues to say that there was pre-existing damage to the cabinets from a water leak incident in March 2015. The Tenant said the damage from this leak was only partially repaired so the Landlord is requesting compensation for pre-existing damage that does not relate to this incident.

The Tenant continued to say they have been responsible tenants and have taken very good care of the unit and property since they moved in in 2006. Further the male Tenant said they have not been negligent in any way and they have acted immediately when any issues have come to their attention with regards to the rental unit or complex. The Tenant said they got verbal permission to put the water filtration system into the rental unit as the Tenants do not like the water quality in the building.

The Tenant said there were two other water issues in March 2015 when the washing machine leaked and the dishwasher was replaced. These water leaks caused damage to the cabinets and floors in the unit and the repairs were only partially done. The cabinets that are now damaged again were not repaired or replaced. The Tenant said they should not be responsible for the cost to repair the cabinets.

Further the Tenant said the water filtration system leak was from a manufactures defect in the filter. The filter had a crack in it and this is where the water leaked out. The Tenant said they had a water company install the filter system and they hired agents of the water company to replace the filters when need. The Tenant said he does not believe he was negligent with regards to the installation or maintenance of the water filtration system.

The male Landlord responded to the Tenant's remarks about the earlier water leak issues in March 2015. The male Landlord said there was water damage and the cabinet bottoms and the floors were repaired or replaced, but the rest of the cabinets were not repaired as the Landlord deemed the damage was not enough to warrant repairs or replacement.

The tenancy agreement was discussed and section 19 of the agreement was examined. Section 19 says the tenants are not allowed to make structural changes and any cosmetic changes need the authorization of the Landlord.

The Tenant said in closing there were pre-existing damages to the cabinets that the Landlord did not repair in 2015 and this should be taken into consideration when determining responsibility for the costs of these repairs. The Tenant continued to say that they have acted in good faith and they have been responsible Tenants. Further the Tenant believes the Landlord has not proven that they installed or did not maintain the water filtration system correctly. The Tenant finished by saying they have been good tenants, they have tenant insurance, they have acted in good faith, they had verbal authorization to install the system from the previous landlord and there was pre-existing damage to the cabinets that they should not be responsible for.

The Landlord's Counsel said in closing that the Landlord has followed the test for a monetary claim. The Landlord has proven a loss, they have shown it was a result of the Tenants' actions, they have verified the loss with receipts and the Landlord mitigated the loss as best as they could by dealing with the issue quickly and with a restoration

company. Counsel continued to say they acknowledge the water damage from 2015 but these were from different sources and the repairs were completed. The Counsel said the Landlord gave testimony that the sides of the cabinets were not damaged enough to replace. Counsel requested the Landlord be awarded the cost of repairs as the damage was caused by the Tenants actions.

Both parties submitted a large amount of statements, briefs, reference letters, photographs, receipts, emails and other supporting documents.

### Analysis

I have reviewed all the evidence submitted and I have referred to my notes regarding the testimony given at the hearing. Following is my conclusions and decision, which is binding on the parties.

Section 32 of the Act says:

Landlord and tenant obligations to repair and maintain:

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit 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 residential property by the tenant.**
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

This incident is very unfortunate as I believe this situation has been a long and successful tenancy. Further, accidents do happen and disputes result from damage which may result from an accident. In this situation the Tenants' water filtration system leaked from a crack in the filter that was attached to the system. The key element here is not whether the Tenant had authorization to have the system in the rental unit, but

that the Tenant owned the water system and used it in the rental unit. Tenants are responsible for the use of their belongings in a rental unit and are responsible for any damage that their actions have on the rental unit or the rental complex. This is why landlords require tenants to carry insurance. Consequently, I find the Tenants are responsible for the water damage to the rental unit as a result of the water leak from the water filtration system on October 10, 2017. Section 32 of the Act says tenants **must** repair damage caused by their actions. The Tenants action of bringing the water filtration system into the rental unit made the Tenants responsible for that water system and any issues related to the system. I find the Tenants are responsible for the water damage repairs.

With that said I also accept the testimony of the male Landlord and the male Tenant that there was pre-existing damage to the cabinets from a water event in March 2015. Consequently, some of the recent repairs remediated damage that was done to the cabinets from the March 2015 water incident. The Tenants are not responsible for repairing any damage from March 2015. Therefore, I find that the repair of part of the cabinets is to be shared by the parties. I have reviewed the restoration company's invoices and I find that the specific costs to repair the cabinets are not itemized. Further the Tenants have not submitted any evidence to substantiate the amount of damage from the water incident of March 2015. Therefore, based on the balance of probabilities I will arbitrarily assign a value that the Tenants are not responsible for. That amount of \$500.00 will be deducted from the Landlord's award for pre-existing damage to the cabinets. .

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has proven their loss exists and they verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord's testimony and evidence that these damages and losses were caused by the Tenants' actions and the costs were reasonable amounts to make repairs to the unit. Consequently, I find the Landlords have established grounds to be awarded their claims.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Emergency repairs	\$ 3,837.65
Plumbing inspection	\$ 154.35
Water damage repairs	\$ 12,663.88
Recover filing fee	<u>\$ 100.00</u>
Sub Total	<u>\$16,755.88</u>
Less	
Pre-existing damage estimate	<u>\$ 500.00</u>
Balance owing	<u>\$16,255.88</u>

### Conclusion

A Monetary Order in the amount of \$16,255.88 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: October 17, 2018.

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Residential Tenancy Branch