



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER DREAM RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNDCT, FFT

### Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed August 14, 2018, wherein the Tenant requested monetary compensation from the Landlord in the amount of \$4,840.00 and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on December 11, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant appeared on her own behalf. The corporate Landlord was represented by the owner, R.K.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any

applicable Orders would be emailed to the appropriate party.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began September 1, 2017. Monthly rent was originally payable in the amount of \$2,750.00 until December 31, 2017 following which it was reduced to \$2,600.00 as of January 1, 2018.

On June 6, 2018 the Tenant arrived home to discover a note on her door informing her that there had been a flood in her rental unit. On June 7, 2018 the Landlord's representative attended to assess the damage.

The Tenant stated that she moved out the next day into another rental unit owned by the Landlord as she was informed that the repairs would take four weeks following which she could move back in.

The Tenant stated that following this, one of the Landlord's staff, M., said that it would not be ready until the end of July 2018. On July 5, 2018 the Tenant attended the rental unit and was informed by the construction workers that the repairs were completed. On July 7, 2018 the Tenant went to the rental unit to move back in and discovered someone else living there; the new Tenant stated that he was staying until the end of July 2018.

The Tenant stated that she was very surprised and upset to find someone living in the rental unit she had been renting for nearly a year.

The Tenant further stated that she paid rent for July 2018 but the rental unit she was put in was not as nice as the subject rental unit. She sought \$800.00 for the difference in market value for the two units.

The Tenant also stated that she also had to take a taxi cab every day due to the location of the new rental unit such that she sought the sum of \$30.00 per day for 48 days, or \$1,440.00 in total.

The Tenant also sought \$2,000.00 for the distress and inconvenience caused by this situation. She stated that she came up with this figure due to the way she was treated by the Landlord. She further stated that building prohibits short term rentals, and she was threatened by the Landlord that if she said anything to the strata they wouldn't let her live in either apartment.

The Tenant said she was only 20 years old, away from her home country and family, and was very intimidated by the Landlord's behaviour.

The Tenant confirmed that both the subject rental unit and the replacement unit were furnished. The Tenant stated that one of the Landlord's staff brought over her shoes, but they did not return her makeup or bathroom items from the subject rental unit. She stated that she repeatedly asked for their return and the Landlord simply stopped responding to her emails.

The owner of the company, R.K., testified on behalf of the Landlord as follows.

R.K. stated that the Tenant's claim is false and that in fact they went out of their way to help her.

R.K. confirmed that there was a leak on June 6, 2018. R.K. further confirmed that the rental unit was uninhabitable as a result of the leak and that they told the Tenant that she could not live there anymore. He stated that several units on the floor which were affected by the flooding.

R.K. stated that they told the Tenant to contact her insurance company to make a claim for any losses as a result of the flood. The Tenant responded that she did not have insurance and asked for help.

R.K. testified that to help the Tenant they offered her another one of their rental units. He claimed they only had one unit available which was a brand new unit and for which they normally charge \$3,050.00 per month. R.K. stated that they did not want to make it more difficult for the Tenant and as such they only charged her \$2,600.00 even though the newer unit was more expensive.

R.K. stated that on July 1, 2018 they found out that the unit was not ready and as a result they extended the Tenant at the replacement rental.

R.K. stated that they removed the Tenant's items from the affected rental unit. R.K. also confirmed that they are not an insurance company and that they did her a favour by letting her stay in another unit. R.K. also stated that they had no knowledge of when the work on the subject rental unit would be done as it was being done by the restoration company.

R.K. testified that the repairs to the rental unit were completed and the unit was ready as of July 7, 2018. At that time the Tenant was already in the other rental unit and as such, R.K., rented the subject rental unit for one month to another person. R.K. claimed that he did not remember this tenant's name or what he charged him for rent. He also did not submit a copy of the tenancy agreement with the tenant who moved into the rental unit on July 7, 2018.

R.K. submitted that the Tenant seemed to be trying to get money from them as she also asked them to pay for her damaged clothing.

R.K. denied that they threatened the Tenant to remove her from the replacement rental unit if she told the strata that they were renting out on a short term basis.

R.K. confirmed that they are not allowed to have short term rentals less than 30 days. When I brought it to his attention that the tenancy was from July 7, 2018 to July 31, 2018 he then claimed the rental was until August 7, 2018.

### Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Tenant seeks compensation relating to a flood in the rental unit which rendered the rental unit uninhabitable for a period of time.

The Landlord disputes the claim arguing that they helped the Tenant by providing her with replacement accommodation at a reduced cost. Further, the Landlord submits the Tenant was responsible for getting her own insurance.

Paragraph 6 of the tenancy agreement provided that the Tenant would obtain her own insurance and reads as follows:

6. PERSONAL INJURY. I/we understand that DVR is not responsible for any injuries to me, my guests and/or my properties and/or my pets throughout the duration of our stay, I/we agree to obtain my/our insurance coverage ahead of time.

A tenancy may only be ended in accordance with the *Act*. The evidence before me confirms that the tenancy did not end, despite the fact the rental unit was rendered uninhabitable for a period of time.

I find the Tenant had a valid tenancy agreement until July 31, 2018, such that she was entitled to exclusive possession of the rental unit until the end of her tenancy pursuant to section 28 of the *Residential Tenancy Act*. I also find the Landlord rented the rental unit out to a third party during this time, contrary to the Tenant's right to exclusive possession.

As noted, the Tenant bears the burden of proving her claim on a balance of probabilities. She must prove that she suffered a loss due to the action or inaction of the Landlord in violation of the *Act*, the *Regulation*, and or the tenancy agreement, as well as the amount required to compensate her for her loss.

In this case, the rental unit was rendered uninhabitable due to the flood. The Landlord aptly noted that the Tenant was obligated, as a term of her tenancy agreement, to have insurance, which would have provided her with coverage for such an event. The evidence before me confirms the Tenant did not obtain such insurance. It is settled law that a landlord is not the tenant's insurer.

The evidence confirms that the Landlord provided the Tenant with alternate accommodation. This was not required, and as the Landlord's agent noted, was done as a favour for the Tenant.

The Tenant alleges that the amount she paid for the replacement unit was excessive and claims \$800.00 for what she submits was an inferior unit. The Landlord's Agent testified that the replacement unit was brand new and in fact rented for more than the subject rental unit. I am unable, based on the evidence before me, to reconcile this discrepancy in the parties' positions. As the Tenant bears the burden of proving her claim, I find she has failed to meet this burden with respect to the alleged overpayment of rent. I therefore dismiss her claim in this regard.

The Tenant seeks compensation for the transportation costs from the replacement unit to her work. Again, had the Tenant fulfilled her obligation to obtain tenant's insurance, she may have recovered these costs during the time the rental unit was not habitable. I therefore dismiss her claim for compensation during this time.

I find that on July 7, 2018, the Tenant could have returned to the rental unit. Due the fact the Landlord has rented the unit to a third party, she was unable to do so. As the Landlord breached her right to exclusive occupation of the rental unit during this time, I therefore find she is entitled to recover her transportation costs during this time. Consequently, I award the Tenant compensation for her taxi charges from July 7, 2018 to July 31, 2018 in the amount of \$30.00 per day, or **\$750.00**.

The Tenant seeks the sum of \$2,000.00 for what she described as “the distress and inconvenience caused by this situation”. I accept the Tenant’s testimony that this was a difficult time for her, particularly as she was away from her family and living out of her country of origin. However, she failed to provide any evidence to support her claim that she suffered any loss as a result. I do, however, accept her evidence that her makeup and bathroom items were not returned to her; while I was not provided with any receipts for the replacement costs, I accept that the Tenant suffered this financial loss. I therefore award her the nominal sum of \$200.00 representing compensation for these items.

Having been partially successful in her claim I find the Tenant is entitled to recover the \$100.00 filing fee.

### Conclusion

The Tenant is awarded monetary compensation in the amount of **\$1,050.00** for the following:

Transportation costs	\$750.00
Nominal amount for makeup and personal items	\$200.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$1,050.00</b>

The Tenant is granted a Monetary Order in the amount of **\$1,050.00**. The Tenant must serve a copy of the Order on the Landlord. Should the Landlord not pay as required the Tenant may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division) 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: January 9, 2019

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Residential Tenancy Branch