



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PAR HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on July 3, 2019 in which the Tenant sought monetary compensation from the Landlord as well as recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 1:30 p.m. on October 8, 2019. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:42 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on July 3, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 8, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's 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 Tenant confirmed her email address during the hearing as well as her understanding that this Decision would be emailed to them.

### 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 July 2012. The Landlord, P.S., purchased the property in 2017 at which time he assumed the tenancy.

The Tenant stated that in May of 2019 the Landlord turned off the water due to a leak in the yard. As a consequence, the Tenant was without water for a week and was forced to stay elsewhere. She confirmed that she was able to stay with her daughter for five nights such that she only sought compensation from the Landlord for two nights she paid to be in a hotel. She also confirmed that she was able to cook and eat at the rental unit and simply washed her dishes at work.

In support of her claim the Tenant provided a copy of the receipt for her hotel accommodation in the amount of \$212.44.

The Tenant also sought recovery of the filing fee.

The Tenant stated that she requested that the Landlord compensate her for her hotel room and he refused. Documentary evidence submitted by the Tenant indicates the Landlord believed the Tenant should have made an insurance claim.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[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 their 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.

After consideration of the Tenant's undisputed testimony and evidence I find as follows.

I accept the Tenant's evidence that she was unable to stay in the rental unit due to lack of water. I also accept her evidence that the lack of water was caused by the Landlord who turned the water off to deal with a leak. I find that the Tenant minimized her losses by staying with her daughter for the majority of the time and by bringing her dishes to her work so that she could continue to use the rental unit for preparing meals.

Based on the Tenant's undisputed evidence I find that the tenancy was devalued due to the lack of water in the rental unit. Section 65 allows me to compensate a tenant when there has been such a devaluation and reads as follows:

**Director's orders: breach of Act, regulations or tenancy agreement**

**65** (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

...(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

I accept the Tenant's evidence as to the cost of her hotel accommodation and I therefore award her monetary compensation for the amounts claimed.

Conclusion

The Tenant is entitled to monetary compensation in the amount of **\$312.44** for the cost of hotel accommodation and recovery of the filing fee. The Tenant is granted a Monetary Order for this amount and must serve the Order on the Landlord. Should the Landlord not pay, the Tenant may file and enforce the Order in the B.C. Provincial Court (Small Claims Division)

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 16, 2019

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Residential Tenancy Branch