



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ARDENT PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDCL

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution, filed on September 17, 2019, in which the Landlord requested monetary compensation from the Tenant in the amount of \$6,576.49 in addition to recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on January 20, 2019. 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 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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and 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 as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

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

2. Should the Landlord recover the filing fee?

Background and Evidence

The nature of the Landlord's claim relates to flooding in the lower unit of a up/down rental building. The Tenant against whom the claim was made resides in the upper unit.

The Landlord's Property Manager, W.M., testified as follows. He stated that there are only two units in the rental home, the upper which was occupied by the Tenant, and the lower unit. He stated that on June 3, 2019, the tenant in the lower unit called to report that their unit was flooding.

A restoration company attended at the Landlord's request. In support of the claim, the Landlord also provided a report from the restoration company which found as follows:

Water Damage – lower tenant who had arrived home to find the carpet soaking wet in the living room. [Restoration company] attended and discovered that the garden hose with sprayer attachment was left pressurized and was spraying against the vinyl siding from where it was attached at the hose bib. It was guessed that it would have been on for at least a day judging from the amount of water.

The day after the flood, the Property Manager spoke to the restoration company and the tenants of the rental home. The restoration company informed the Property Manager of the above findings.

In terms of why the Landlord believed the upstairs Tenant left the house pressurized, the Property Manager stated that only the upper Tenant uses the yard. He also noted that the lower tenant was away for the weekend and only discovered the water when he returned. The Property Manager also testified that when he spoke to the upstairs Tenant, she stated that it was likely her son who left the water pressure on. The Property Manager further noted that the Tenant also stated that there was a problem with the connection between the hose and the faucet such that it was clear she was aware of the problem. The Property manager also noted that when he spoke to the Tenant, she did not suggest it was the lower tenant's responsibility.

The Property Manager submitted that the Tenant attached the hose improperly causing the water to spray. He stated that when he attended the home after the flood, she told

him there was an issue with the connection, however, when he attached the hose properly there was no spraying.

The Landlord also claimed monetary losses for rent of the unit that was affected by the flooding. The Property Manager testified that as the lower tenant lost use of approximately half of the square footage of his rental unit, the Landlord reimbursed the lower tenant 50% of the rent paid for the balance of the month (26 days in June).

The lower tenant also moved out on June 17, 2019 following which the Landlord had difficulty re-renting the rental unit due to restoration of the unit. The Property Manager stated that they were not able to re-rent the lower rental unit for two months. He stated that the lower tenant had already given notice to end their tenancy effective June 30, 2019. The Property manager confirmed that the restoration work was completed on July 29, 2019. He further stated that it was not re-rented until September 1, 2019. He stated that the fact the work was done so close to August 1, 2019 made it difficult to show the rental unit and rent it earlier.

The Landlord sought compensation for these losses as well as the amounts incurred to repair and restore the rental unit. In support of the claim, the Landlord filed a Monetary Orders worksheet detailing the Landlord's monetary claim as follows:

Emergency services	\$1,843.34
Carpet underlay replacement	\$386.98
Carpet cleaning	\$145.95
Reinstallation of washer and dryer	\$178.09
Restoration of walls and trim	\$1,600.96
Rent compensation to lower tenant	\$431.17
Loss of rental income of lower unit during restoration	\$1,990.00
<b>TOTAL CLAIMED</b>	<b>\$6,576.49</b>

The Landlord also provided in evidence photos of the rental unit, photos of the restoration work, as well as invoices and receipts for amounts paid to repair the damaged unit.

In response to the Landlord's claims the Tenant testified as follows.

The Tenant denied liability for the flooding. She stated that it was her role to take care of the yard however, she denied leaving the water on. She also confirmed the downstairs

renter does not use the hose. She stated that she has three full time children and a fourth step son who lives with her part time. She also confirmed that she was home when the flood occurred as were her two daughters who are five and 13 years old respectively. She stated that none of them said they had left the water on. The Tenant also denied telling the Property Manager that it was her son.

The Tenant testified that she did not remember saying there was a problem with the attachment. She confirmed however that she did tell the Property Manager that she could not get a good grip with the hose.

The Tenant confirmed she did not have property insurance at the time of the flood as she had just moved in. She also testified that she applied and was denied insurance which she assumed was because of this issue. The Tenant also noted that to her knowledge, any insurance she would have had would cover her belongings, and not any losses incurred by the downstairs renter.

In terms of quantum of damages, the Tenant stated that she would have brought in her family members to help with the work and minimize the cost of the work. She stated that the Property Manager told her that the owner was going to make an insurance claim; and later he told her that it was denied. She says she has not been provided proof of this.

In terms of the rental losses, the Tenant stated that she felt they “didn’t go out of their way to rent it” and it took a long time to do the renos.

The Tenant further stated she did not look at the downstairs unit but noted that the lower renter was not inconvenienced because he was already moving out having given his notice for the end of June 2019.

In reply the Property Manager stated that he was informed that the insurance claim was denied; he was not able to provide any further details about this.

### 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 Landlord 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 testimony and evidence before me, and on a balance of probabilities I find the Tenant, or her children, improperly attached the hose to the faucet and left the water pressure on the hose at the rental unit, causing the water to spray against the home and flood the lower rental unit.

I accept the Landlord's testimony and evidence that this was the cause of the water ingress. I am also persuaded by the report from the restoration company as well as the photos submitted by the Landlord that the water came from the hose, which was left pressurized, and was spraying water against the building.

The Tenant conceded that the downstairs renter does not use the hose. She did not dispute that he was away for the weekend when the flooding occurred. She also confirmed that she is responsible for the yard and uses the hose to water her outdoor plants.

I also accept the Property Manager's testimony that when he first discussed the flooding with the Tenant, she posited that it could have been her son who left the water on. I also accept his testimony that she reported difficulties attaching the hose to the faucet. I find, on balance, that it is more likely the Tenant or her children improperly attached the hose, and then left the water pressure on.

I am satisfied, based on the evidence before me that the Landlord incurred the losses claimed as a result of the flooding. The invoices and receipts support the claimed out of pocket expenses for the repair and restoration. I also find the amounts claimed to be reasonable based on the damage to the rental unit. A landlord is not the tenant's insurer and is not required to make an insurance claim against their own policy for losses caused by a tenant.

I am also satisfied the Landlord gave the downstairs renter a rental discount based on the fact that a larger portion of his rental unit was unusable. I find that the downstairs renter's intention to move at the end of June 2019 to be of no consequence; the simple fact is that his rental unit was largely unusable during the last month of his tenancy due to the flooding and may be why he decided to move out even earlier.

I also find, based on the timing of the flood and the subsequent repairs and restoration, that the Landlord was unable to re-rent the rental unit until August 1, 2019. I therefore award the Landlord the amounts claimed for rental losses.

As the Landlord has been successful in their Application, they are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

Pursuant to sections 38, 67 and 72 of the *Act*, the Landlord is entitled to monetary compensation in the amount of **\$5,676.49** for the following expenses and losses incurred as a result of the Tenant flooding the lower rental unit:

Emergency services	\$1,843.34
Carpet underlay replacement	\$386.98
Carpet cleaning	\$145.95
Reinstallation of washer and dryer	\$178.09
Restoration of walls and trim	\$1,600.96
Rent compensation to lower tenant	\$431.17
Loss of rental income of lower unit during restoration	\$1,990.00
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$6,676.49</b>

In furtherance of this my Decision, I grant the Landlord a Monetary Order in the amount of **\$6,676.49**. The Landlord must serve a copy of this Order on the Tenant and may, if necessary, 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: February 4, 2020

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Residential Tenancy Branch