



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES- SIDHU &  
ASSOCIATES and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, PSF, RP, RR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package in person. The tenant stated that the submitted documentary evidence was served to the landlord in a "USB" with the notice of hearing package in person. The landlord argued that no "USB" was served or received. The tenant stated that the evidence and hearing package was served with a witness, her father, J.B. The witness, J.B. provided affirmed testimony that he was unsure, but that a "USB memory stick" was given to the landlord in person at their office with the hearing package. I find based upon the tenant's submissions and the witness evidence that on a balance of probabilities that the landlord was properly served with the submitted documentary evidence as claimed. Although the landlord argued that he is not in possession of the evidence, the landlord is deemed served as per section 90. Both parties were advised that when referenced,

the tenant's documentary evidence would be described in detail for the landlord to provide him an opportunity to respond. The landlord submitted no documentary evidence. Neither party raised any further service issues.

### Preliminary Issue(s)

At the outset the tenant's application was clarified. The tenant seeks an order cancelling the 10 Day Notice; a monetary claim for compensation; an order for the landlord to make repairs to the sewer drain to prevent future back ups; to provide services or facilities required by the tenancy agreement for the fireplace; and a rent reduction for services or facilities agreed upon but not provided for the fireplace.

Both parties confirmed that in a previous hearing (file number noted on the cover of this decision) a settlement agreement (for an application for emergency repairs) was made where the landlord was granted an order of possession for February 1, 2020. As such, the tenant's request for an order cancelling the 10 Day Notice; an order for the landlord to make repairs to the sewer drain to prevent future back ups; to provide services or facilities required by the tenancy agreement for the fireplace; and a rent reduction for services or facilities agreed upon but not provided for the fireplace are cancelled as the tenancy has ended.

There is a remaining issue of a monetary claim of \$7,625.00 for compensation for clean up work by the tenant for repeated water leaks. The landlord made an argument that the monetary claim is prohibited as part of a previous settlement agreement.

Extensive discussions by both parties and a review of the settlement agreement by this Arbitrator shows that the monetary claim in this application was not resolved in the decision dated January 23, 2020. The landlord made repeated arguments that term #3 of the settlement which states "The tenant withdraws her application in full as part of this mutually settled agreement." The landlord argued that this included the tenant's current monetary claim. I find that that settlement agreement referenced only dealt with the application filed that was before the Arbitrator in the decision dated January 23, 2020 for the tenant's application for emergency repairs. No mention of any further disputes or this application was made in that settlement agreement. As such, I can proceed with jurisdiction over the tenant's monetary claim.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began May 15, 2019 on a fixed term basis until April 30, 2020 as per the submitted copy of the signed tenancy agreement dated May 5, 2019. The monthly rent is \$2,2125.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,062.00 was paid on May 5, 2019.

The tenant seeks a monetary claim of \$7,625.00 which consists of:

\$3,125.00	25 hours of clean up after water leak at \$125.00/hr.
\$3,875.00	31 hours of clean up after water leak at \$125.00/hr.

The tenant claims that on November 6, 2019 the hot water tank leaked causing water issues. The tenant claims that multiple telephone calls were made to the landlord requesting assistance to clean up the water leak as it was ongoing issue over a two month period during November and December 2019. The tenant submitted copies of her labour for cleaning recorded as "Novemberbill" and "Decemberbill". The tenant stated that the hourly rate of \$125.00 is based upon a verbal quote from a friend who is a restoration specialist. The tenant stated that she herself has worked as a restoration worker.

The landlord confirmed in his direct testimony that the hot water tank issue was reported on November 6, 2019 for which a service technician was retained and dispatched. The landlord argued that they were not notified of a clean up issue due to the water leak until January 3, 2020. The landlord argued that as such, the landlord disputes the tenant's claim as they were not given an opportunity to resolve the issue themselves.

The tenant argued that notice was given to the landlord and has referred to the submitted copies of telephone call logs to the landlord. The tenant stated that these logs are proof of her calls to the landlord.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay

compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed evidence of both parties that a hot water tank issue occurred on November 6, 2019 for which the landlord retained a service technician.

The tenant has claimed that the landlord was notified of clean up requirements after the service technician resolved the hot water tank issue. The landlord has argued that no such notice was given and as such, the landlord disputes that they were not given an opportunity to resolve the clean up themselves. The landlord disputes the tenant's monetary claim.

I find based upon the evidence provided by both parties that I prefer the evidence of the tenant over that of the landlord regarding notice of a clean up requirement after an issue occurred for the hot water tank. The tenant besides the detailed "bills" which document the amount of hours spent each occurrence to clean up the water provided a copy of her telephone call logs which documents numerous calls to the landlord over the same duration. However, the tenant relies upon a verbal estimate provided by a friend who works for a professional restoration company for an hourly rate of \$125.00. Although the tenant stated that she had previously worked as a restoration worker, the tenant was unable to provide sufficient evidence of justification for this hourly rate for herself as opposed to a professional company charge. As such, I find that the tenant has failed to provide sufficient evidence of the \$7,625.00 claim. I am however, satisfied that the tenant provided undisputed affirmed evidence that clean up was required as claimed by the tenant for 61 hours over the 2 months period. As such, I grant the tenant a nominal monetary award for \$1,220.00 based upon a general hourly labor rate of \$20.00 per hour.

### Conclusion

The tenant is granted a monetary order for \$1,220.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced 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: March 11, 2020

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Residential Tenancy Branch