



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AZIZAMALCO HOLDINGS LTD. DBA CONN LODGE  
APARTMENTS and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, OLC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on February 4, 2020, wherein the Tenant sought \$1,133.75 in monetary compensation from the Landlord relating to a flood which occurred on January 12, 2020, an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement as well as recovery of the filing fee.

The hearing of the Tenant's Application was conducted by teleconference on April 14, 2020 and June 1, 2020. 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.

By Interim Decision dated April 14, 2020, I permitted the Tenant to amend her original Application to claim compensation for a second flood which occurred in early February 2020. The Tenant filed an updated Monetary Orders worksheet in which she increased her claim to \$2,108.00 to include compensation for both floods. Both parties submitted further evidence in this regard and provided further testimony and submissions when the hearing reconvened on June 1, 2020.

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.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
3. Should the Tenant recover the filing fee?

Background and Evidence

In support of her claim the Tenant testified as follows. She stated that her tenancy began December 15, 2015. Monthly rent is \$1,561.07.

The Tenant claimed financial losses as a result of a sewer backup in her rental unit. In this respect she testified as follows. She stated that at approximately 2:30 p.m. on January 12, 2020 she noticed that water was backing up in her kitchen sink as she heard water bubbling in her kitchen while she was washing her floor. She used draino and her plunger which initially worked. She stated that when the water reappeared, she used more draino and hot water and again it worked. The following day (January 13, 2020) at 3:00 p.m. she heard bubbling again and her sink was partially full again. She then plunged again, used the rest of the draino, and it drained. She stated that later on, at 9:30 p.m. the sink backed up again and at that time she sent photos to the building manager, D.F. as she realized the issue was more problematic.

The Tenant stated that D.F. came to the unit two days later on January 15, 2020 to look at the unit. The Resident Manager used a “bomb” (pressurized can) which Tenant believes made the situation worse. The Tenant stated that at that time the sewer water smell was unbearable and it was clearly noticeable when the Resident Manager attended on the 15<sup>th</sup>.

The Tenant testified that the Landlord did not offer for her to go and stay anywhere else, nor did they send a plumber until January 17, 2020 such that she lived in the rental unit with the smell for four days.

In terms of the cause of the blockage, the Tenant stated that the plumber ultimately determined that the clog originated in the basement, likely in one of the horizontal pipes. The plumber used a “snake” and went down 25-30 feet at which time the blockage was located. The plumber also went down to the unit below and did the same with a snake.

She stated that the unit below did not have an issue with sewage back up as they have a “backflow valve” such that water does not back up in their unit.

The Tenant sought monetary compensation for 13.5 hours of her time dealing with the first flood issue at \$25.00 per hour. She also claimed reimbursement for one week’s rent, for the “loss of enjoyment of her home, dealing with the sewer smell and toxic chemicals”. During the hearing the Tenant confirmed that she arrived at this figure by dividing her monthly rent of \$1,561.00 by four weeks to arrive at a figure of \$390.25.

The Tenant stated that the Landlord did not send in a remediation company to dry the unit out such that the oak flooring is now turning black and lifting. She stated that the grout is also started to come up.

The Tenant confirmed the Landlord offered her 3 days rent as compensation.

As noted in my Interim Decision, I adjourned the original hearing to permit the Tenant to amend her Application to claim losses relating to the second flood which occurred on February 3, 2020. At the continuation of the hearing the Tenant provided the following additional testimony.

The Tenant testified that the sink started backing up again on February 3, 2020. On February 16, 2020 there was another massive overflow and on February 17, 2020 the plumbers came to repair the damage. The Tenant stated that they put a snake down to clear the drain following which they changed the P-trap and installed a double head. The Tenant stated that the plumber did not know what the issue was at that time however they later determined that it was a result of a blockage in the parallel pipes in the underground parking, or perhaps in the laundry room.

The Tenant stated that as a result of the flooding, the tiles in her kitchen have now started moving as the grout is compromised. She stated that she told the resident manager, D.F. about this at the time. She stated that she also told D.F. about the grout lifting in the kitchen and the sink is starting to lift.

The Tenant combined her claim for both floods in an amended Monetary Orders Worksheet which detailed her total claim as follows:

Replacement of lost goods (towel and kitchen carpet)	\$186.00
Time to plunge and deal with the flood (2.5 hours)	\$62.50
Cleaning and mopping up water (3 hours)	\$75.00

Personal time cleaning and disinfecting after both floods (11 hours)	\$275.00
Personal time dealing with plumber after both floods (4 hours)	\$100.00
Time preparing RTB application	\$240.00
Rent reduction for loss of quiet enjoyment for three weeks at \$390.25 per week	\$1,170.00
<b>TOTAL CLAIMED</b>	<b>\$2,108.50</b>

In terms of the goods lost, the Tenant claimed that she has used three towels to clean up the mess that were used beyond repair as well in addition, her kitchen carpet was damaged beyond repair.

In response to the Tenant's claim, the Landlord's property manager, D.F., testified as follows. He stated that when the Tenant first informed them of the flood, they monitored the situation". He claimed that the sink was not overflowing the first day, rather it was merely backing up. He stated that they have had issues like this in the past in the building, and draino was sufficient to clear the blockage. When the situation worsened on January 15, 2020, he then hired a plumber who attended on January 17, 2020. He stated that on the 15<sup>th</sup> it overflowed all over her kitchen and it was clear that draino wasn't solving the issue.

D.F. confirmed that he has seen the photos of the damage to the hardwood flooring. D.F. stated that they have had sinks clogged in the building (which has 40 units), but none have overflowed to this extent; he noted that he was not instructed to get a remediation company for other units when those back ups occurred. He also stated that when he helped the Tenant clean up he could not smell the sewer, although he noted that he does not have the best sense of smell.

D.F. stated that the unit flooded again, and at that time it was determined there were "issues throughout the entire drainage system". A.F. confirmed that it is the Landlord's position that the first flood was the Tenant's responsibility as it was determined to be caused by the unit's drain line. In terms of the second flood the Landlord's position is that the flooding was a result of the buildings drainage as determined by the plumber.

A.F. confirmed that the Landlord agreed to compensate her the following: 3 days rent in addition to her out of pocket expenses for her towels and her kitchen rug.

A.F. noted that the plumbing report did not support the Tenant's testimony regarding the first flood. A copy of the report was provided in evidence and which indicated the first

flood was due to hair and a cloth, the second was due to more extensive issues with the rental building's plumbing.

### 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.

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

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

**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.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
  - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the finding as set out in the plumbing report provided in evidence before me. The service report indicates that a large amount of hair and a cloth was pulled from the drains between the subject rental unit and the lower unit during the first plumbing incident. As this tenancy has been ongoing since December 15, 2015, I find it more likely than not that the hair and cloth were in the drains as a result of the Tenant's failure to prevent those items from entering the drain system. On balance, I find that the first flood was due to the Tenant's actions and is therefore her responsibility.

The report indicates the second flood was a result of a blockage approximately 25-30 feet down from the rental unit. On balance, I find this flood to be a result of the plumbing system at the rental unit and therefore the responsibility of the Landlord.

The Landlord's agent confirmed they were agreeable to compensating the Tenant for the replacement cost of her rug and towels. I therefore award her the requested **\$186.00**.

The Tenant sought compensation for her time preparing for this Residential Tenancy Branch Application. Such administrative time is not compensable under the *Act* and I therefore dismiss her claim for related compensation.

I accept the Tenant's testimony that she spent a considerable amount of time dealing with the two plumbing incidents. Notably, the Landlord did not dispute the amount of time the Tenant claimed to have spent dealing with the blockage or cleaning and disinfecting after the blockage was cleared. I find the \$25.00 hourly rate claimed by the Tenant to be reasonable based on the tasks performed.

As I am not awarding the Tenant compensation for her time dealing with the first flood, I have reduced her award by the amounts initially claimed from the amended Monetary Orders Worksheet to arrive at the amounts claimed for the second flood as follows:

Time to plunge and deal with the second flood (1.0 hour)	\$25.00
Cleaning and mopping up water reduced by half to account for second flood only(1.5 hours)	\$75.00
Personal time cleaning and disinfecting (5 hours)	\$125.00
Personal time dealing with plumber (2 hours)	\$50.00

While I have found the Tenant is responsible for the first flood, I find the Landlord failed to take adequate steps to remediate the water damage such that any resulting damage to the rental unit flooring is not the Tenant's responsibility. I accept the Tenant's testimony that she cleaned up the water as quickly as possible and informed the Landlord of the flood. I find that in doing so she took reasonable steps to deal with the water. I further accept the Tenant's testimony that as the Landlord failed to take steps to remediate the water damage, the wood flooring is starting to discolour and the grout is lifting in other areas. I also accept her testimony that due to the Landlord's failure to respond promptly, she endured the unpleasant smell of the sewer back up.

As such, I find the Tenant is entitled to compensation for the devaluation of her tenancy. I award her the nominal sum of \$500.00 as compensation for the breach of her right to quiet enjoyment of the rental unit due to second flood as well as the Landlord's delay in remediating her rental unit after both floods.

I find the Landlord has failed to honour their obligation to maintain the rental unit in a condition suitable for occupation by the Tenant. I therefore Order, pursuant to sections 32 and 62(3) of the *Act*, as follows:

- 1. By no later than July 15, 2020, the Landlord retain the services of a remediation company to remediate and repair any water damage at the rental unit.**
- 2. The Tenant is at liberty to apply for further monetary compensation relating to the remediation efforts should those efforts unreasonably impact her quiet enjoyment of the tenancy.**

### Conclusion

The Tenant's claim for monetary compensation is granted in part. The Tenant is entitled to the sum of **\$1,061.00** for the following:

Replacement of lost goods (towel and kitchen carpet)	\$186.00
Time to plunge and deal with the second flood (1.0 hour)	\$25.00
Cleaning and mopping up water reduced by half to account for second flood only(1.5 hours)	\$75.00
Personal time cleaning and disinfecting (5 hours)	\$125.00
Personal time dealing with plumber (2 hours)	\$50.00
Nominal rent reduction for loss of quiet enjoyment	\$500.00



Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$1,061.00</b>

Pursuant to section 72 of the *Act* I authorize the Tenant to withhold the sum of \$1,061.00 from her next month's rent payment.

The Tenant's request for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement is granted. The Landlord must retain the services of a remediation company to repair the water damage to the rental unit by on later than July 15, 2020.

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: June 25, 2020

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Residential Tenancy Branch