



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rockwell Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$5,000.00 for money owed or compensation for loss under the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of his Application filing fee.

The first hearing was held on June 22, 2020, but was adjourned to September 4, 2020, because the Landlord did not have sufficient time to consider and respond to the Tenant's Application and documentary submissions.

The Tenant and his advocate, J.B., and three agents for the Landlord, S.M., T.K., and A.M. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure "(Rules)"; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

I was advised by his Advocate that the Tenant has a disability, and that he has health care team members, such as the Advocate, who assist him in his living arrangements.

#### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2010, with a monthly rent of \$625.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$312.50, and no pet damage deposit.

The undisputed evidence before me is that the Tenant moved out of the rental unit, because of leaks, which started in mid to late March 2020. The Application involves the costs the Tenant said he incurred in having to leave the rental unit and find new accommodation on short notice.

#### **#1 Temporary Accommodation → \$3,456.12**

The Tenant claims reimbursement for the temporary accommodation he said he was required to use as a result of multiple leaks in the rental unit. He said he stayed in the hotel from April 6 to May 15, 2020.

The Tenant said that the problem started when there was a flood of unknown origin in the rental unit...near the end of March [2020]". The Tenant's advocate said that the Advocate was on holidays when it happened. He said:

I was informed of the flood a week and a half of him living in this condition. They came in and cut holes in drywall and informed him that he needed to ventilate. [The Tenant] got an infection from the mould. He had a telehealth conference on

the phone with a doctor, who prescribed antibiotics on March 30. He has a [local] health case management team. We were his health care team. He saw the nurse on our team on March 30, as well. It was recommended that he find new living conditions. [The Tenant} stayed another week before moving into a hotel. We discussed this with his Mom, and we managed to find one. Given the moving of homeless individuals to hotels at that time, it made finding a hotel difficult.

The Tenant submitted a letter dated April 2, 2020, from the Advocate to the Agent, T.K., which includes the following:

I am writing on behalf of my client [the Tenant] in regards to the water damage previously discussed through calls/e-mails. The problem arose at the beginning of last week with water leaking through the ceiling above the toilet and the surrounding walls. During this time your maintenance tech entered the suite, cut a hole out of the ceiling and shut off the water valves where the leak was originating from and verbally asked the client to leave the door open for ventilation purposes. Due to health concerns/troubled breathing our client had to close the door. This has since caused the exposed area to have black mould grow as no proper equipment was provided for ventilation/de-humidification. Furthermore, the leak has since returned and has shown signs of coming through the walls and water pooling under the floors/carpets.

We understand that a plumber has been booked for Monday April 6<sup>th</sup>, 2020 to fix this leak and we can appreciate that you are taking this seriously. Additionally, we would like to request that the areas of the bathroom/living room which have accrued damage during the time in between plumbing repairs (eg. The walls, ceiling and floors) be repaired/replaced appropriately. Secondly, we would like to request that proper de-humidification equipment is provided and accurate readings of the moisture levels in the walls are measured professionally to ensure the health and safety of our client. We would like to request that the de-humidifiers are provided no later than one week from the time of the leak being fixed, and that repairs to the damaged areas are completed no later than two weeks from said time. This should provide adequate time for removal of soiled drywall, flooring/carpets, de-humidification, and replacement of drywall/ceiling fixtures/carpets etc. We would appreciate your acknowledgment of this letter via e-mail, or phone call.

I infer from this letter that the leak in the rental unit happened on approximately March 23, 2020.

The Tenant submitted photographs of the rental unit with:

- bubbling paint on the ceiling,
- cracks in the walls with water dripping out,
- a carpet with a large water stain about 1.5 feet squared,
- water on the tile floor,
- mould spots on the ceiling where the paint was bubbling from the water,
- large holes cut out of the ceiling, and
- three buckets and a towel on the floor of the bathroom to catch water leakage.

The Tenant submitted a letter from his physician, A.B., MD, dated July 8, 2020, which states:

To Whom It May Concern,

I am writing this letter in support of my patient, [the Tenant], re: residential tenancy board

I assessed [the Tenant] over telehealth on March 30, 2020, and found him to be suffering from an acute exacerbation of chronic bronchitis brought on by exposure to aerosolized particulates in his apartment. At that time his symptoms had been worsening for two weeks and were directly related to the deplorable conditions of his apartment with leaking pipes and water damage of the walls and ceilings. I prescribed him a course of oral antibiotics and requested our outreach nursing team to assess him at home.

Sincerely,

[Signature]  
[A.B., MD]

The Advocate said that the Tenant's mother arranged the hotel accommodation. He said that it cost \$89.00 per night, although, he said: "After a while they changed it to a reduced rate for [the Tenant] of \$62.00 a night on April 29. He was there from April 6, until May 15, when he moved into a new rental unit." The Tenant submitted hotel receipts showing these nightly rates plus tax.

The Agent said:

I understand when I went to see the unit there was a leak. We contacted plumbers, but it was very challenging to get plumbers in. Immediately, the regional property manager needed to find accommodation in the short-term for him. We didn't have one in that building, but there were several things that we offered.

When the leak happened, the plumbers were called, and he was asked to ventilate the unit. He never opened windows. We brought a dehumidifier in and he unplugged it, because he couldn't deal with the noise. Despite the health care providers, he smokes unendingly all day. We were willing to repair the unit, and offered another apartment in another building, but he couldn't smoke. He took the option to move out on his own accord.

The Advocate said:

He didn't have a dehumidifier until April 8. . . after he was out, so he didn't unplug it. He always leaves his window open - has always had it open in the year.

The Agent, S.M., said:

When I went in to do the walk through, the windows were closed. Every surface was caked with tobacco - that includes the floors wall, ceilings, the windows, fridge stove – all caked with tobacco. We did the walk through on May 6 or 7. The apartment is still sitting. We haven't touched it. It is yellow as a brown sharpie. There's no mould in the unit; we've had a contractor. [The Tenant] caught his infection because he sits in the apartment and smokes. In the evidence package, we offered another apartment a half a block away.

The Advocate said that this was "...about four weeks into the issue and two weeks after he had found another place."

The Agent said: "No we offered it before that." And the Advocate replied: "Yes, but the offer was not finished until April 9 or 10<sup>th</sup>, and he was out of the building by then."

The Agent said: "When he said I want to move, . . . we gave him three different options."

The Parties continued to discuss what options had been offered to the Tenant at what point, without agreement.

The Tenant submitted an email from the Advocate to the Landlord dated April 25, 2020. In this email, the Advocate asked the Landlord for their proposed options for the Tenant in writing, so there would be no misinterpretation. The Landlord's Agent, T.K., responded with the following options on April 27, 2020:

Option 1

Current lease ends due to renovation and new lease written up with 'NO Smoking in unit due to renovation and tenant agrees to keep the 'housekeeping standards' of his leases. New lease will maintain current rent in [rental unit #] at April 1<sup>st</sup>, 2020 **rent amount of \$726.00** when the unit is available to move in. No rent collected during renovations, and the security deposit remains intact and moves into a new lease.

[emphasis in original]

Option 2

Tenant does NOT wish to move back into Sunset, security deposit will be returned to tenant, and tenant may list me as a reference to obtain new accommodations elsewhere, phone number [number provided] ask for T.K.

[emphasis in original]

Option 3

Tenant leaves Sunset and takes a new 1 bedroom suite main floor unit at [Apartment building name] transferring his security deposit and pays rent of \$1150 per month. \$200 off market rent includes heat & hot water plus hydro and 1 parking stall, if needed worth \$35.00 per month and signs a new lease.

On April 29, 2020, the Agent emailed the Advocate to say:

I just spoke with [the Tenant], and we have a plan of action for a letter of reference for him to move into a new place somewhere else on May 15<sup>th</sup>, 2020. I just spoke with the head office and they said to go ahead with the reference and once he is approved for the new unit, he will put it in writing with the help of his worker or the hotel computer. At that point we will work with him to get his security deposit to him at his new location and sign off on his unit at Sunset.

The Advocate said:

This started in March, and we're getting lots of talk about April 10, 15, 25.... My client was having health issues directly due to the water damage. This was not due to smoking, this was reviewed by nurses, doctors.... He was offered another unit, maybe at the same price - I was not there for that verbal talk. But he had already paid for the month of April. He moved into the hotel for his best health outcome. There was no smoking in the hotel and there's no smoking in the new unit. He's doing everything in his power to make sure to take care of his health in the best possible way.

The Agent said:

Yes, I would like to say that I did offer him accommodation right from the get-go. He was against moving all along. There was no need to go to a hotel. He even refused to look at it; he refused to answer the door. His way of keeping the unit could have led to an eviction.

The monetary part is of concern. We have lots of buildings, lots of apartments. I sometimes had to go out of my way to get things into the unit. I don't think . . . the hotel was his decision; it was his Mom's decision. We did not charge for May's rent. There was no money. He didn't want to move his stuff, except what he wanted to do. And that's not negating the costs.

## **#2     Rental Truck for Moving → \$63.71**

The Tenant submitted a receipt for a truck rental dated May 15, 2020 for \$63.71.

I asked why the Landlord should pay for the Tenant's moving costs. His Advocate said:

The Landlord didn't do everything they could. It was just the best option - safer that he moved out. He was forced to be evicted in the grand scheme of things, so I don't think he should have to pay for that.

I note the Landlord's evidence from above is that they proposed this move as the second option open to the Tenant.

The Agent said:

Re the [rental truck], that's a personal charge. He was not evicted. He was

offered other apartments. If he chose to move into a hotel, that was his choice. If he chooses to move, you don't get to reduce your security deposit because you need a [rental truck]. Those costs are his and have nothing to do with us.

They did take a mutual vacate. We came to an agreement – everyone was involved to get him where he is now. To come back after you agree to everything, is part of ... it's a material breach of an agreement.

The Advocate said:

Yes, Tuesday May 12 we were emailed something, as follow up to a conversation long before that. It's in the evidence - the email [dated May 12, 2020]:

Hi [Advocate],

This email confirms my phone conversation with [the Tenant] on May 11, 2020. We contacted him at the hotel and confirmed these details:

1. Vacate premises by May 15<sup>th</sup> 4 pm
2. Standard Move Out Clean
3. Upon walk through of unit on May 15<sup>th</sup> sign off on move out inspection and forwarding address for the return of security deposit.

The Agent said:

Because [the Tenant] wouldn't come deal with the paperwork with us, there's no specific document as the mutual agreement [to end the tenancy].

### **#3     Additional Compensation for Undue Stress → \$1,480.17**

I pointed out to the Advocate that the amount set out in the first two categories does not come to the \$5,000.00 claimed in the Application. I asked where the remaining \$1,480.17 comes from. The Advocate said:

I apologize. My first go, we were told we could claim for monetary emotional suffering ... [The Tenant] was put through the ringer in the month and a half. There was no emergency response for this emergency situation. He was dragged along; he has anxiety issues, a brain injury - to have those kinds of



pressures - I felt that it was appropriate to ask for more compensation.

The Agent said:

His statement that we didn't take this seriously is fundamentally false. We called all sorts of places. We called the people he said could be there in 24 hours and none of them would do it. We took this very seriously. We were the only ones who made offers. We went to him. At no point did they take the initiative to mitigate their own damages.

We called several companies. They didn't call one. We brought the one in who could do it the fastest. We brought in a dehumidifier. It was at the beginning of the pandemic when everything was shut down. We never said this is okay, but can we do this. . . . I find this an affront. We spent a great deal of money to mitigate this situation. There were oceans of stuff left behind. His security deposit doesn't come close to covering the cost of the repairs. It is fundamentally untrue that we didn't take this seriously.

The Tenant said:

One thing - after the plumber first came in, I had exposed asbestos. The plumber used a full hazmat suit. I had five leaks; I was told I should use an umbrella.... Leaks over the toilet, over the bathtub - and three other ones. It wasn't taken seriously at all. It was two weeks after the leaks started that they would bring in a plumber. The plumber they brought in said he could have come at any time. He used a hazmat suit, and I was supposed to keep living there. That's when I went on antibiotics and I couldn't breathe. They said it would be a problem that would go away. They brought a dehumidifier weeks after. My windows were never closed, my drapes were closed, because I'm on the bottom floor.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I explained that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 ("PG #16") sets out a four-part test that an applicant must prove in

establishing a monetary claim. In your case, the **Tenant** must prove:

1. That the **Landlord** violated the Act, regulations, or tenancy agreement;
2. That the violation caused the **Tenant** to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the **Tenant** did what was reasonable to minimize the damage or loss.

("Test")

Section 32 of the Act states:

### **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.

[emphasis added]

Policy Guideline #1 "Landlord & Tenant – Responsibility for Residential Premises" states the following:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

## **#1 Temporary Accommodation → \$3,456.12**

Based on the evidence before me overall, I find that the following events happened on the following days:

March 23.....Leak in rental unit ceiling;

April 6 .....Plumber arrives;

April 6 .....Tenant moves to hotel;

April 29.....Landlord's options for Tenant set out in writing (email); and

May 15.....Tenant moves to a new residence.

I also note that the a state of emergency was declared by the Province on March 18, 2020. I find that this made it difficult for the Landlord to find a plumber to do the repairs at this time. However, I find that during this time, the Landlord could and should have been assisting the Tenant in finding alternate accommodation that met health and safety standards. The Agents implied that they offered the Tenant alternate housing

options, but that he declined those offers early on. However, the Tenant is disabled and has a health care team, as well as his mother, as contact points that the Landlord could have contacted, rather than turning to the Tenant, whom the Landlord said was difficult to reach.

I find that the Landlord may have been trying genuinely to have the repairs done, despite not being able to do so efficiently, because of the state of emergency. However, I find that this was an emergency for the Tenant, too, and that the Landlord provided insufficient options to the Tenant at the time that it mattered the most for alternate accommodation. I find that it was reasonable in the circumstances for the Tenant's Mother to arrange alternate housing for the Tenant at a hotel, until the repairs were completed at the rental unit. When it became apparent that the Landlord was not going to accomplish the repairs promptly, the Tenant and his team sought an alternative residence elsewhere for the Tenant.

I find that the Tenant was deprived of a healthy, safe rental unit that was required by the tenancy agreement and section 32 of the Act. PG #16 states that a party's damage or loss is not limited to physical property only, but also includes less tangible impacts, such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

PG #16 also states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or

- value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the evidence provided to me overall, I find that the Landlord failed to comply with their obligation under section 32 of the Act to maintain the rental unit in a state of repair that complies with health and safety standards. I find that the Tenant remained in the rental unit for two weeks after the leak occurred, which compromised his health. I find it was reasonable in the circumstances for the Tenant to have sought an alternate, healthy living arrangement, which in the short term, turned out to be hotel accommodation. I find that the Tenant provided evidence of the cost of this accommodation and that he and his team did the best they could to find a reasonably priced hotel. As the Advocate said: "Given the moving of homeless individuals to hotels at that time, it made finding a hotel difficult." Based on the evidence before me, I find that the Tenant has met his burden of proof on a balance of probabilities, and that he is eligible for compensation from the Landlord for the cost of his alternate accommodation. I, therefore, award the Tenant with **\$3,456.12** from the Landlord, pursuant to section 67 of the Act.

## **#2 Rental Truck for Moving → \$63.71**

I turn again to the Test noted above for determining the Tenant's eligibility for compensation for this claim. I find that but for the leak in the ceiling, the resulting damage and moisture, and the Landlord's slow response in addressing the leaks – but for these factors - the Tenant would have remained in the rental unit. I find these factors exemplify a breach of section 32 of the Act on the Landlord's part.

As part of remedying his situation, the Tenant had to move, and he chose the second option the Landlord offered in this situation. If he had not had to move, the Tenant would not have needed to rent a truck. I find that the Tenant provided evidence of the cost to him in this regard, and that it was more likely than not cheaper to rent a truck than to hire movers. As such, I find that the Tenant fulfilled his burden of proof on a balance of probabilities for this claim, and thereby established his eligibility for compensation from the Landlord. I, therefore, award the Tenant with recovery of the truck rental fees of **\$63.71** from the Landlord, pursuant to section 67 of the Act.

## **#3 Additional Compensation for Undue Stress → \$1,489.17**

The evidence before me is that the Tenant had lived in the rental unit for ten years and

that he is disabled. I find that the events that occurred between mid-March and mid-May 2020 would be extremely stressful for someone in this situation.

However, I find that the value of this claim was not clearly set out in the Tenant's Application. In addition, in the hearing, the Advocate acknowledged that this amount was calculated on what was left over after the first two claims were satisfied. I find this is an insufficient measurement of the value of this claim, pursuant to the Test. Further, I find that it means that the Landlord was not given proper notice of the claim ahead of time. I find this breaches the Landlord's right to administrative fairness, as well as the Rules, and therefore, I dismiss this claim without leave to reapply.

### Summary

I find that the Tenant provided sufficient evidence to meet his burden of proof on a balance of probabilities for his first two claims, and I have awarded him a total of \$3,519.83, as a result. The Tenant was unsuccessful with his third claim, as he did not give sufficient notice of the value of this claim to the Landlord. It is, therefore, dismissed without leave to reapply.

I also award the Tenant with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I grant the Tenant a Monetary Order in the amount of **\$3,619.83** from the Landlord, pursuant to section 67 of the Act.

### Conclusion

The Tenant is partially successful in his claim for compensation from the Landlord in the amount of \$3,519.83. The Tenant provided sufficient evidence to fulfill his burden of proof on a balance of probabilities for his claim for accommodation and truck rental. The Tenant was unsuccessful in his claim for additional compensation for undue stress, due to providing insufficient evidence of the value of that claim. This claim is dismissed without leave to reapply. I also award the Tenant with recovery of the \$100.00 Application filing fee.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$3,619.83**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 7, 2020

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Residential Tenancy Branch