



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, MNDCT, PSF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order for the Landlord to Comply with the Act or tenancy agreement; for a monetary order for damage or compensation under the Act for the Tenant of \$10,000.00; and for an order to provide services or facilities required by the tenancy agreement or law.

The Tenant and two agents for the Landlord, R.B. and B.G. ("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. One Witness for the Tenant, D.D., was also present and provided affirmed testimony.

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.

Both Parties denied receiving the bulk of the other Party's evidentiary submissions. However, the Tenant said that he sent the Landlord his Application, Notice of Hearing, and evidentiary submissions in seven different Canada Post registered mail packages. The Agents said they received one package. The Tenant provided tracking numbers for two of the packages. When I checked them on the Canada Post tracking website, one was returned, because it had an insufficient address. The other package was available for pick up on November 30, 2020, but was not retrieved by the Landlord. The Tenant said that his other packages were not picked up by the Landlord, either.

According to RTB Policy Guideline #12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." The Canada Post tracking information indicates that the registered

mail packages were mailed on November 25, 2020. Pursuant to section 90 of the Act, I find that the Application, Notice of Hearing, and the Tenant's evidentiary submissions were deemed served on the Landlord on November 30, 2020.

The Agents said that they emailed their first set of evidence to the Tenant, because they did not know where he was staying. I explained that they should have obtained an order for substituted service from the RTB, allowing them to email everything to the Tenant, as this was the only address the Landlord had for him. However, the Landlord did not obtain an Order for substituted service, and without it, evidence cannot be served by email, pursuant to sections 88 and 89 of the Act. Further, the Tenant denied receipt of the Landlord's emails. Accordingly, given the provisions of the Act and principles of administrative fairness, I decline to consider the Landlord's documentary submissions in this matter; however, the Agents' testimony is evidence before me.

#### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in his Application and the Parties confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In the hearing, the Parties confirmed that the Tenant had vacated the residential property on September 13, 2020. As a result, I find that the Tenant's claim for an Order for the Landlord to Comply with the Act or tenancy agreement, and for an Order to provide services or facilities required by the tenancy agreement or law are no longer relevant. Therefore, I dismiss these claims without leave to reapply.

#### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on September 28, 2017, with a monthly rent of \$725.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$300.00, and no pet damage deposit.

The Parties agreed that the Tenant signed the tenancy agreement with a different landlord, as the Agents said they had purchased the property subsequent to the tenancy agreement being signed. They added that they have now sold it to a new owner.

### **Monetary Compensation → \$10,000.00**

The Parties agreed that the Tenant was away from the rental unit on vacation for approximately a month in July and August 2020, and that he returned to the rental unit on August 7, 2020. The Parties agreed that in the Tenant's absence, a water pipe in the residential property became blocked, and as a result, the rental unit was flooded. The cause of the blockage is not in dispute and is not an issue before me. The Tenant said:

I got back home on August 7, and when I walked in, I noticed that the sinks had overflowed and that the water was about seven centimetres deep on the floors.

The Tenant said that he told the Landlords about this and that they came downstairs and helped him clean the floors and the kitchen appliances. He said he continued to clean in the following days, and asked the Landlord for a fan and screens for the windows to help dry it out.

The Tenant said that he had vacationed in the United States and that he was required to quarantine in his apartment for two weeks after his return, due to the Covid19 health emergency. He said that despite the damage to the rental unit, he insisted on staying there from August 7 to the 21<sup>st</sup>, 2020.

The Tenant said that the Landlords required him to vacate the rental unit, because they had to repair the flood damage. In the hearing, the Tenant said:

The first thing, the Landlord said I had to vacate the place, because they had to do repairs, and I understood that. When I returned on August 7, I talked to them, and said I'm paying you \$725.00 a month, and I can't get any other accommodation. They said they'd find accommodation and they'll pay for it. Next they said that I had to pay for it.

I talked to [D.D.], and she said I could stay with her for four days. I went back to the basement suite and I found out on the 12<sup>th</sup> that I couldn't come back. I checked hotels – they were \$80.00 a night, and I couldn't afford that.

They took my furniture and put it all outside. It's been outside for four months.

They didn't put it in the garage, and they put it outside. It was all ruined. So, I'm like okay, fine. I go over there periodically, but it wasn't finished. It was all damaged except for the bathroom. So I said fine, okay, and I put the majority of my stuff in the bathroom. I found out that they had taken everything out of the bathroom. Why? They said that everything had to be removed from the apartment. They said it would only take about two to three weeks to repair.

When asked what notice they gave the Tenant to vacate the rental unit for repairs, they said:

As soon as we find out that ... we called the tenancy branch. We served him the two months notice, which we gave him.

He wouldn't leave, because he refused for the first month notice. The damage will be not that much if he had gone somewhere. It wasn't that bad – only in the kitchen and living room, and he stayed in there two weeks, because he said he had to quarantine for two weeks.

The Agents said that the rental unit remains unrepaired as of the date of the hearing, because of disputes with their insurance company. Further, the Agents said the residential property has been sold and that the new owners are using the entire property, including the rental unit.

The Tenant submitted a written explanation of his claim, which I have set out in the following monetary order worksheet:

	<b>Receipt/Estimate From</b>	<b>For</b>	<b>Amount</b>
1	No receipts	Food destroyed in fridge	\$223.00
2		Reimburse Rent	\$2,900.00
3	No receipts	Personal Possessions	\$4,225.00
4		Market rent increase	\$2,100.00
		<b>Total monetary order claim</b>	<b>\$9,449.00</b>

In the hearing, the Tenant said:

When I went to the RTB to make this Application. They said to write down an

amount. I said 'what should you write down?' They said that \$10,000.00 is a reasonable amount and I said okay I'll put that down.

**#1 SPOILED FOOD → \$223.00**

In the hearing, I asked the Tenant about this claim and he said:

It represents the loss of the food in the fridge that I lost because of the mold. When I came back on the 8<sup>th</sup>, the refrigerator had been turned off, and the food went bad.

In his written submission, the Tenant said:

Food that was destroyed in the refrigerator that I found unplugged when I returned to basement suite on September 8 at 1:30 pm. There was \$223.00 in meat and butter that was destroyed and had to be thrown out. Marked A.

The Tenant submitted photographs of food in his refrigerator and freezer that he said was thrown out by the maintenance workers.

In the hearing, in answer to the question how did he calculate this amount claimed, the Tenant said that the groceries had prices on them.

In his written submissions, the Landlord said the following about this claim:

For food loss, he left all his food in the fridge and did not take it with him even when we told him to take it with him as it will go bad. However, he did not take it so, the workers had to throw it out as it began to smell.

The Agents did not comment on this matter in the hearing.

**#2 REIMBURSE RENT → \$2,900.00**

In his written submissions, the Tenant said:

Within the last four months I have spent a little over three weeks in the basement suite that contained black and green mold because I was paying the landlord \$725.00 a month and I only [earn] \$1150.00. The landlord said that they would first find and pay for a place for me to stay and then changed their minds. I spent

August 7 to September 13 in the suite with a brief time from September 4 to September 8 when I found a place to stay that would accept future payment.

. . .

I am asking for these four months rent to be returned because my health was put in extreme danger because of the landlord.

In his written submissions, the Landlord said the following about this claim:

For rent loss, he forcibly was giving us rent even when we told him he did not need to pay the rent. I've added a registered delivery notice that he sent to our home as evidence to show that he was forcing us to accept the rent. We also sent him a letter with a cheque returning two month's rent which he did not want to accept. I've added that as evidence, too.

The Landlord submitted a photograph of an email the Landlord wrote to the Tenant dated September 9, 2020, as well as a cheque from the Landlord dated September 9, 2020, made out to the Tenant in the amount of \$1,450.00.

The Landlord also said the following in his written submissions:

Finally, he texted us saying he sent us the rent for the months of December and January knowing we do not own the property anymore, as it has been sold. He is forcing us to take rent money from him while claiming he has rent loss.

In his written submission received in our office on October 20, 2020, the Tenant said:

I had previously sent a check via registered mail on Sept 24<sup>th</sup> because landlord would not accept rent check in person; I will also send a check registered mail for November's rent.

In the hearing, Agents said:

We said we are not accepting your rent because you are not living there. The next time he went to our house. . . We said we are not taking your rent. We received his October and November rent cheques. That's a mistake that we did cash the cheques. When we said you have to move, we offered him two months rent back in a letter. We said, 'can you accept this two months' rent?' And he said, 'no I'm not taking this back'. On September 9, we offered him two months' rent back, because he wasn't able to live there - \$1450.00.

In his written submission, the Landlord said:

The tenant, [D.T.C.], claims he lost money since he had to rent another place and claims to provide a place for him to stay and pay for it while repairs are being made.

[The Tenant] texted us saying he is staying with a friend while the repairs were going on. This reveals that he did not have to spend money to find a place as he was living with his friend. He also said that he was unable to find a place and would become homeless but was living with his friend and had a place to stay.

Not only this, we also offered to help find another basement while the repairs were going on however, he refused to move to another basement and wanted an apartment in a building or a hotel.

The Witness said:

When a Two Month Notice is given, it's given while the person is still living there - to look for another place while living there. If you're not there, the \$1450.00 they tried to give back was for rent already paid. They have to give Two Month Notice and a month for free.

However, the Parties agreed that the Tenant successfully challenged the Two Month Notice in RTB arbitration. The Two Month Notice was cancelled.

The Agents said:

He's not staying there, but he still owned the property and was still paying the rent, so that is why we gave it to him. By the time we had our house deal done, we weren't . . . we told him the house is sold, so we were not owners of that house.

The Witness said:

The notice when someone sells a house has to go through a new landlord, whether the person can stay or not stay. There was no statement to [the Tenant] that they were even selling the house.

The Landlord submitted a text he received from the Tenant, which states the following:

Because you gave me the new key after you changed the locks the first time, I took some stuff back inside and I paid rent that you cashed for Oct. And Nov. I also sent you Dec. and Jan. rent before the first of Dec. Then you changed the locks again so I could not get in. I have no home so what are you trying to do to me after I have been a good tenant and always paid rent on time?

[reproduced as written]

The Agents said that the renovations and repairs were not done by the date of the hearing on January 5, 2020. They also said that the new owners want the whole house empty of tenants.

### **#3    PERSONAL POSSESSIONS → \$4,225.00**

In the hearing, the Tenant said that the Landlord moved his furniture out of the rental unit for the purposes of doing repairs, but that the furniture was not properly protected. The Tenant said:

The furniture was not in a shed, it was underneath their porch, it was not enclosed. They put the bedding from the other apt there, too.

The Tenant said this included: “bedroom furniture, a 40-inch television, clothes, pots and pans, living room furniture.”

The Tenant provided photographs of his personal possessions, including a mattress with writing on the photographs saying “Outside - Oct 9<sup>th</sup>/2020” I can see that the possessions are on what looks to be a cement floor with walls. It also looks like there is a roof in some of the photographs.

In his written submissions, the Landlord said the following about this claim:

Also, he claimed that his belongings were left outside. This is not true. In the letter I’ve attached it states that his belongings were in a shed safely until he finds a place.

The Tenant did not indicate how he knew that his possessions were ruined by where they were stored, rather than by the flood in the rental unit that led to this situation. The Tenant did not indicate a value of each item for which he is claiming compensation.



**#4 MARKET RENT INCREASE → \$2,100.00**

The Tenant said the following about this claim in his written submissions:

I am also seeking an additional one year of payment over the \$725.00 that I will pay to find a new apartment while the virus is going on. I am seeking this additional amount because rental prices have increased in this time. The maximum up to but not to exceed the total time spent at [rental unit address].

The Parties agreed that the tenancy started in September 2017; therefore, the Tenant has lived there for nearly three and a half years. The amount he claimed is \$175.00 times 12 months, equalling \$2,100.00.

When asked him why he paid rent if he was not living there, the Tenant said:

I was told to pay it, the Landlord said I wasn't given any notice, and if I wanted to stay there, keeping it current, meaning I should pay the rent.

The Tenant said:

The \$10,000 isn't unreasonable for what I have. I have to leave this person's place and I'll be homeless, and I'll be 75 in about a week. I'll have to stay at shelters. I don't know what I'm going to do. This person's letting me stay there out of the goodness of their heart. I can't afford a hotel. That place wasn't the best place, but it was reasonable, and close to things I could walk to. They never gave me a notice to vacate. Since they took over the lease from the previous landlord, they said we'll let him stay there.

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 said 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 this 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 in the circumstances to minimize the damage or loss.

("Test")

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

As set out in PG #16, "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."

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#### **#1 SPOILED FOOD → \$223.00**

Section 32(1) of the Act states that a landlord must provide and maintain the residential property in a state of decoration and repair that:

- (a) complies with 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 the tenant.

I find that the food spoilage was an indirect result of the flood in the rental unit. During the course of repairing damages to the unit, someone turned off the refrigerator. The Landlord said that the Tenant had been told to empty the food from the refrigerator; however, the Tenant said that he was given no such warning before the appliance was turned off. The burden of proof is on the Tenant in this matter. If I am unable to distinguish between the Parties' positions, I must find that the Applicant has not provided sufficient evidence to meet the burden of proof.

The evidence before me is that the worst damage from the flood was in the kitchen and the living room. I find it is reasonable with common sense and ordinary human experience to infer that the maintenance workers would have had to turn off and possibly move the appliances in order to repair the kitchen flooring. I find that even if the Tenant had not been advised of this factor that he could have surmised that it would have been turned off sooner or later, and therefore, that he should remove the contents of the refrigerator and freezer.

I find on a balance of probabilities that the Tenant was told or should have known to remove the food from this appliance before the repairs began. As a result, I dismiss this claim without leave to reapply.

## **#2 REIMBURSE RENT → \$2,900.00**

The Tenant said he wants to be reimbursed for four months rent: “. . .because my health was put in extreme danger because of the landlord.” I find that the compelling evidence before me is that the Landlord tried to reimburse the Tenant for rent, given the condition of the rental unit; however, the Tenant refused such payments, despite his position now.

Further, the Tenant insisted on quarantining himself in the flooded rental unit, because he had been in the United States during the Covid19 health emergency. If the Tenant had insurance to rely on, he would have been covered for this situation. I find that the Tenant did not mitigate or minimize his loss by having insurance coverage, which I find detracts from his claim.

Further, if the Tenant could point to costs that he incurred from having stayed in a hotel or rented another short-term apartment, he might have a ground to claim compensation against the Landlord. However, I find that the Tenant has not substantiated the value of his costs sufficiently with costs incurred that were attributable to the Landlord's actions. I find that the Tenant has failed steps three and four of the Test. I, therefore, dismiss this claim without leave to reapply.

## **#3 PERSONAL POSSESSIONS → \$4,225.00**

I find that the Tenant did not provide sufficient evidence to support this claim. He did not provide evidence of how his possessions were damaged, based on where they were stored by the Landlord. There is no list of items with their value set out; there are no receipts or estimates of a cost to replace items, but merely a broad amount claimed.

Further, I find that the Tenant did not mitigate or minimize the damage to his furniture, as he left it there, despite knowing in September 2020 that the furniture had been moved to a shed or outside. The Tenant could have had the furnishings moved to a storage facility and applied for dispute resolution to claim the cost from the Landlord; however, he chose to leave his belongings in conditions he considered insufficient for their protection.

In addition, it raises questions in my mind that the Tenant did not mention having had insurance to cover the costs he incurred.

Overall, I find that the Tenant did not provide sufficient evidence to prove this claim on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

#### **#4 MARKET RENT INCREASE → \$2,100.00**

The Tenant's explanation of this claim is that rents have risen since he moved into the rental unit, and therefore, the Landlord should provide him with compensation to cover this increase in market rent.

I find that the Tenant did not provide sufficient evidence to establish a landlord's responsibility to pay increased market rent under the Act, if the tenancy should end, due to damage to the rental unit. As a result, I dismiss this claim without leave to reapply.

#### Summary

The Tenant is unsuccessful in his claim for compensation from the Landlord. I found that the Tenant did not provide sufficient evidence to meet his burden of proof on a balance of probabilities. Accordingly, the Tenant's Application is dismissed wholly without leave to reapply.

#### Conclusion

The Tenant is unsuccessful in his Application, as he did not provide sufficient evidence to support his claims on a balance of probabilities. The Tenant's claims are dismissed without leave to reapply.

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: January 19, 2021

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Residential Tenancy Branch