



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING  
SERVICES and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, RR, RP, FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord SP ("landlord") and "landlord NM," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 34 minutes.

The landlord confirmed that she was the area manager for the landlord company named in this application and that she had permission to speak on its behalf. Landlord NM confirmed that he was the building manager for the landlord company named in this application and that he had permission to speak on its behalf.

At the outset of the hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord, landlord NM, and the tenant all affirmed under oath that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with the hearing, they wanted me to make a decision, and they did not want to settle this application.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

### Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order allowing her to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to an order requiring the landlord to complete repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2018. Both parties signed a written tenancy agreement. Monthly rent in the current amount of \$1,322.00 is payable on the first day of each month. A security deposit of \$645.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The tenant testified regarding the following facts. There was smoke wafting into the tenant's rental unit. The tenant's complaint was not acknowledged, and no repair was done by the landlord. On January 8, 2021, the landlord did maintenance work in the

rental unit and a huge hole was left open in the drywall. Smoke wafted in through the drywall, making it unliveable for the tenant, since she is a non-smoker. A smoker lives below the tenant. The tenant had no control and could not close the hole. On February 2, 2021, the building manager temporarily covered the hole. On March 13, 2021, the work order was completed. The smoke has been an ongoing issue since 2019. It turned from a nuisance to unliveable, so the tenant could not live in the rental unit. Presumably the smoke is coming from below the tenant's rental unit, but the tenant wants an investigation by a third party. A discussion can occur with the tenant below and the entryway can be sealed. The tenant could have been offered a different unit in the same rental building by the landlord.

The tenant stated the following facts. The tenant saw the landlord's evidence, where an inspector attended in March 2021, and completed a report. The tenant is not satisfied with the landlord's inspector, as the smoke issue was never fixed, the rental unit was not sealed, there are cracks in the molding and around fixtures, and the inspector was not told the above information by the landlord. The tenant was happy in the rental unit until November 30, 2020. The tenant knew before she moved into the rental unit and before signing the tenancy agreement that residents were "grandfathered in" to be able to smoke inside their rental unit. The tenant expected smoke around the balconies and common areas of the rental building, and she does not expect it to be smoke-free, but she wants a comfortable place to live in. The tenant wants 2.5 months of rent, totalling \$3,305.00, for the drywall hole that was left open plus the temporary cover, as she could not live in the rental unit. The tenant wants \$1,445.00 for her bed, clothing, and upholstery that will have to be cleaned in the future, based on a quote.

The landlord testified regarding the following facts. The landlord disputes the tenant's entire application. The landlord acted in a responsible manner. The landlord had plumbing done in January 2021 and it is normal practice to leave the space open for air to get in and the area to dry out. On February 2, 2021, the tenant told the landlord that she was concerned about smoke and that she wanted to move out. On the same date, the landlord told the tenant that she would accept late notice to move out with no penalty if the tenant told the landlord within the next one to two days if she was actually moving out. Also, on the same date, the building manager temporarily covered the hole in the tenant's rental unit. On February 8, 2021, the landlord sent in a work order for a contractor to fix and cover the hole. The landlord was told that March 8, 2021 was the earliest that the repair could be done, so it was completed on March 13, 2021. When the drywall repair was done, the building manager and the inspector went through the rental unit and an inspection report was completed by the contractor, with further suggestions. The tenant was given a new bathroom fan and the patio door was fixed.

The procedure for a repair is for the tenant to complete a maintenance request and this was never done until the tenant filed this application and provided her evidence at this hearing. The landlord offered the tenant a different rental unit, the tenant looked at it and did not like it, and she did not want to move into it. The landlord disputes the tenant's monetary claim, as the tenant did not provide any receipts, and the landlord cannot rely on quotes from the tenant.

The tenant stated the following in response to the landlord's submissions. The tenant thinks that she disagrees that she did not provide a maintenance request to the landlord for the showerhead. There was no communication by the landlord to the inspector about the unsealed cracks around the molding and fixtures. The landlord fixed the patio glass door and put a new bathroom fan in the rental unit. The landlord told the tenant to keep the fan on for smoke. There is a two-inch gap in the pipe in the bathroom. The tenant can send more photos later. The tenant understands that within reason, the hole in the drywall has to be left open. On January 30, 2021, the tenant told the landlord that the rental unit was unliveable, and no work order was sent until February 8, 2021, since it was not prioritized, and no repair was done until March 13, 2021. The tenant thinks it was a monetary issue for the landlord. The tenant could have got someone in to fix the issue earlier than the landlord did.

### Analysis

During the hearing, I notified the tenant that as the applicant, she was required to present her application and prove her claims.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim.*

*The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenant did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 34 minutes, so the tenant had ample opportunity to present her monetary application and respond to the landlord's submissions. The tenant submitted numerous documents but failed to properly go through them in any detail, during this hearing. The tenant spoke for the majority of the hearing time, as compared to the landlord.

### Repairs

Section 32 of the Act states the following:

*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.*

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for the landlord to complete repairs to the rental unit, without leave to reapply. I find that the landlord fulfilled its obligations under section 32 of the Act, to repair and maintain the rental unit, upon receiving complaints from the tenant.

I find that the tenant failed to provide sufficient evidence that the landlord failed to take appropriate action to follow up on the tenant's complaints. I accept the landlord's testimony and the tenant's confirmation that the landlord had a contractor repair the

hole in the drywall, and that the landlord installed a new bathroom fan and repaired the patio glass door. I find that the contractor's repair schedule is not within the control of the landlord. I find that the landlord did not delay the repair, which I find was completed within a reasonable amount of time. I find that the tenant failed to provide sufficient evidence that she sent a maintenance request to the landlord regarding her complaints, as this is standard procedure in the rental building. The tenant agreed that leaving the drywall hole open was normal procedure, as confirmed by the landlord.

The tenant agreed that she was aware that residents were "grandfathered in" and permitted to smoke inside their rental units, before she moved into the rental unit and before signing the tenancy agreement. The tenant chose to live in the rental unit, despite the fact that she is a non-smoker and she finds smoking makes her rental unit unliveable.

The tenant did not dispute the landlord's testimony that she was offered another rental unit in the same building but did not want to live there. The tenant did not dispute the landlord's testimony that the landlord agreed to accept the tenant's late notice to move out with no penalty, but the tenant wanted to remain in the rental unit.

The tenant is not an expert in drywall, cracks, seals or other such repairs. Simply because the tenant does not agree with or is not satisfied by the landlord's contractor, does not mean that the tenant is entitled to further investigations or repairs in the rental unit. I find that the landlord fulfilled its obligations by hiring and paying for a professional contractor to repair the deficiencies in the rental unit and issue an inspection report.

The tenant's application for the landlord to hire another contractor, have another third party investigate the smoke issue, have a contractor seal cracks and other areas in the rental unit, and have discussions with the tenant below about smoking, is dismissed without leave to reapply.

### Monetary Compensation and Rent Reduction

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$4,750.00, without leave to reapply. I find that the tenant failed to satisfy the above four-part test. The landlord disputed the tenant's claims.

I find that the tenant did not provide sufficient evidence to substantiate her monetary claim for \$4,750.00. The landlord even stated that the tenant did not provide receipts to support her claim. When I questioned the tenant as to her claim of \$1,445.00 for a future cost that had not yet been incurred, she said that she would provide receipts later, but she only had a quote. The tenant did not indicate her efforts to mitigate her losses.

The tenant agreed that she did not incur any costs for cleaning her bed, clothing and upholstery from smoke for \$1,445.00. The tenant did not provide sufficient evidence for her claim of \$3,305.00. The tenant did not lose 2.5 months of rent, as the period between January 8, 2021 and March 13, 2021 is not 2.5 months long. The tenant did not provide invoices, receipts or other such documentary evidence to show that she did not live in the rental unit during the above time period, that she lived elsewhere, or that she incurred costs to live elsewhere.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

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: May 27, 2021