



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated January 31, 2021 ("1 Month Notice"), pursuant to section 47; and
- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The landlord, the landlord's agent, 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. The landlord confirmed this his agent, who is his wife, had permission to speak on his behalf. This hearing lasted approximately 30 minutes.

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, the landlord's agent and the tenant all affirmed under oath that they were not recording, and they would not record the 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 at the hearing. Both parties confirmed that they were ready to proceed with the hearing and they had no objections.

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.

The tenant was in receipt of the landlord's 1 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

### Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on July 1, 2021, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that his 1 Month Notice, dated January 31, 2021, is cancelled and of no force or effect;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of her application at this hearing, except for her monetary claim.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties affirmed that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

Both parties were unable to settle the tenant's application for a monetary order and asked that I make a decision about it. Below are my findings.

### Issue to be Decided

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

### 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 claim and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018. Both parties signed a written tenancy agreement. Monthly rent in the current amount of \$2,500.00 is payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

As per her application, the tenant seeks a monetary order of \$5,000.00. The landlord disputes the tenant's application.

The tenant testified regarding the following facts. She moved into the rental unit in September 2018 and noticed that the deck and stairs were rotten. She told the landlord, but nothing was done at that time. Her husband fell through the railing on to the stairs below and hurt himself. The landlord came right away, a couple days later, when the tenant reported the issue. The deck was repaired by the landlord during the next summer. A zap strap was used for the railing. The tenant lost the use of the deck. The dishwasher was not working for 2.5 months and it was included in the tenancy agreement. There is mold in the laundry room the whole time the tenant has been at the rental unit. There is mold in the bathroom downstairs at the rental unit because when it was first fixed by a contractor, it was not done properly. The deck is still unsafe.

The landlord testified regarding the following facts. When the tenant moved into the rental unit in September 2018, a move-in condition inspection report was done and there was no mention of the deck or stairway issue by the tenant. In March 2019, the landlord repaired the bathroom. There was water running down which deteriorated the staircase. There are no issues with the deck railing, it was reinforced. The tenant has not provided any report regarding her husband's injuries to the landlord or the RTB. The landlord was not told about this until now, at this hearing. The railing is back in place and repaired to full use. The basement bathroom was renovated by the landlord for \$11,500.00. The landlord gave the tenant \$200.00 off her rent during this month of repairs. There is now dried mold that has returned in one corner of the bathroom, from water coming down the side of the house. The landlord's contractor was ready to go in to fix it, but the tenant did not allow it, due to the covid-19 pandemic, which the landlord

respects and understands was a government restriction. The landlord's contractor is still waiting to go into the rental unit. The tenant has replaced all of the landlord's appliances without notice to the landlord. The tenant's sink works for her to wash dishes as well. The landlord took care of the rats by laying traps right away but when the tenant told him it did not work, he called an exterminator who blocked all the holes. The landlord has not heard anything since, about the rats, from the tenant. The tenant leaves garbage all over the yard. The landlord does not know where the tenant's dollar amounts come from, regarding her monetary claim.

The tenant stated the following in response to the landlord's submissions. The rat issue took awhile for the landlord to resolve and it was not the tenant's fault, so damage was done. The landlord brought traps and called the exterminator. The tenant did not see the deck issue right away because it was covered outside. The railing was reinforced but there is still a soft spot on the deck. The tenant provided photographs of the reinforced stairs. The tenant did not come up with the covid-19 restrictions, the government said that no one outside the household could come into her home. Now they can, but it still has not been done.

#### Analysis of Tenant's Monetary Application

During the hearing, I notified the tenant that as the applicant, she was required to present her application and prove her claim on a balance of probabilities.

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*.

During the hearing, the tenant failed to properly go through her specific monetary claims and the amounts for each claim. This hearing lasted 30 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 go through any of them, during this hearing.

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.*

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 \$5,000.00, 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 \$5,000.00. The tenant did not indicate how she arrived at the above monetary amount. The landlord even questioned the tenant as to how she arrived at the above amount, but the tenant did not respond, despite being given the opportunity to do so. The tenant did not provide a breakdown of her monetary claim, did not explain what amounts she was seeking and why, and did not indicate her efforts to mitigate her losses.

I find that the landlord fulfilled his obligations under section 32 of the *Act*, to repair and maintain the rental unit, upon receiving repair 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 completed pest control to deal with the rats, renovated the downstairs bathroom to deal with the mold problem, and repaired the dishwasher. I accept the landlord's testimony that he provided rent compensation of \$200.00 to the tenant, during the extensive bathroom renovations.

I accept the landlord's testimony that he repaired the deck, stairs and railing, such that it is safe to use by the tenant. I find that the tenant failed to provide sufficient evidence that she does not have full use of the deck, due to a "soft spot." I accept both parties' testimony that the landlord sent a contractor to deal with another mold problem in the corner of the downstairs bathroom, but the tenant was unable to provide access due to the covid-19 pandemic restrictions. The landlord confirmed that he is still willing to complete this work when the tenant is able to provide access.

### Conclusion

The landlord's 1 Month Notice, dated January 31, 2021, is cancelled and of no force or effect.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached Order of Possession effective at 1:00 p.m, on July 1, 2021, to be used by the landlord **only** if the tenant does not abide by condition #1 of the above settlement. The tenant must be served with this Order as soon as possible after they do not comply with the above agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application for a monetary order of \$5,000.00 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 14, 2021

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Residential Tenancy Branch