



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TPM PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, MNDCT, RR, OT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on March 15, 2021, wherein the Tenant sought the following relief:

- an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement;
- an Order for monetary compensation from the Landlord in the amount of \$4,525.00 including a retroactive rent reduction for loss of services and facilities as well as loss of quiet enjoyment of the rental unit; and,
- other unspecified relief.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on June 28, 2021. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 11:21 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that immediately upon receiving the hearing package from Service B.C., she personally served the Landlord with the Notice of Hearing and the Application on March 24, 2021. I accept the Tenant's testimony in this respect and find the Landlord

was duly served as of March 24, 2021 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The Tenant confirmed she vacated the rental unit on June 10, 2021 such that her request for an order that the Landlord comply with the *Act*, the *Regulations*, and the tenancy agreement was no longer required.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Is the Tenant entitled to a retroactive rent reduction?

### Background and Evidence

This tenancy began December 1, 2020. Monthly rent was \$1,395.00.

The Tenant submitted that the Landlord misrepresented the rental unit. She testified that once she moved in, she realized there were numerous issues with the unit, including, but not limited to:

- the entire building was in disrepair;
- there were constant noisy crowds in the lobby;
- her items were stolen from her rental unit due to lack of security;
- there were numerous loud gatherings outside which disturbed her;
- the building smelled;
- the rental unit was not renovated, contrary to the ads for the unit;
- the rental unit was not clean when she moved in;
- there was no parking, contrary to the Landlord's representations;
- there was also no storage; and,
- she was unable to effectively communicate with the Landlord.

In written submissions, the Tenant detailed her concerns about the rental unit, including, but not limited to the following:

- the Tenant felt they were forced to enter into the tenancy agreement due to an extreme rental shortage;
- the lease terms were “purposely difficult to understand”;
- the parking spots were not assigned;
- the laundry facilities require a card which is not always usable;
- although the tenancy agreement makes no mention of storage lockers, the Tenant claims she was verbally assured she would have one, yet was never provided on.
- the unit was “oversold” as renovated, yet there were crumbs in the cupboard;
- fluctuating water in the toilet;
- the bathroom fan is inadequate;
- the carpet imprints easily;
- the fridge door opens the wrong way;
- the doors are old;
- the move in inspection was unclear;
- the intercom system is inadequate;
- the kitchen sink stopper is missing;
- the elevator smells;
- the building is under “military surveillance”;
- the fence around the parking is “purposefully modified to look deteriorated”
- items were removed and then returned to the Tenant when she was moving in, in such a way she found “creepy”;
- people are constantly sitting outside or in the lobby and “expecting conversation”;
- the Tenant’s car has been broken into;
- there is a pile of “junk” in the laundry room which the Tenant believes is a shrine and a “sign of occult witches who ‘covet’ personal items and assign ‘feelings’ to them”;
- the landlord is missing teeth and can’t concentrate;
- there are “refugee families of various nationalities, crowding the parking lot and entrance, black people—assumed American—possibly military and several younger females also disdainful”; and,
- people smoke within three meters of the entry way.

[reproduced as written by the Tenant]

In the claim before me the Tenant sought the sum of \$4,525.00. She stated that she sought \$3,900.00 in a retroactive rent reduction including \$300.00 for November, as well as \$600.00 per month for the months December 2020 through May 2021. The Tenant also sought \$625.00 which she characterized as the initial first month. The Tenant did not provide any submissions as to how she came to these figures.

### 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 four elements, the burden of proof has not been met and the claim fails.

After consideration of the Tenant's undisputed testimony and evidence, I find as follows.

The Tenant makes several broad complaints about the condition of the rental unit and her allegation that the unit was not sufficiently renovated, or "oversold". I find that these issues, if they can be characterized as such, were likely readily apparent when she viewed the rental unit, or should have been, had the Tenant exercised due diligence. Although a tenant may feel rushed when viewing a rental unit, particularly in a housing crises, it is their responsibility to sufficiently view the unit prior to entering into the tenancy agreement. I am not satisfied, based on the evidence before me that the Landlord misrepresented the unit.

The Tenant also made several complaints about the behaviour of other occupants of the rental building. These complaints range from others speaking loudly, treating her in a way which she believes is "with disdain", or socializing and wanting to communicate with her. While the Tenant may have found this behaviour upsetting, I am not satisfied it affected her right to quiet enjoyment or is indicative of the Landlord breaching the *Act* or tenancy agreement in any way. It is notable that some of the written submissions provided by the Tenant indicate her intolerance to those from other parts of the world or ethnicities, such that I find the Tenant may have been bothered by other's behaviour based solely on her own prejudice and intolerance, not anything the Landlord did, or failed to do.

Additionally, the Tenant provides no basis for the amount claimed, nor does she attempt to quantify any alleged loss. As noted previously there are four elements that a claimant must prove; in this case, the Tenant has failed to prove any of these elements. She has failed to prove the Landlord breached the *Act*, or tenancy agreement; failed to prove she suffered a loss; failed to prove the amount required to compensate her; and failed to prove she made any effort to mitigate her loss. As such I dismiss her claim without leave to reapply.

Having been unsuccessful in her application, I also dismiss her claim for recovery of the filing fee.

### Conclusion

The Tenant's claim is dismissed in its entirety.

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: July 15, 2021

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Residential Tenancy Branch