



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RP,

### Introduction

On March 16, 2021, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement. On July 26, 2021 the Tenant amended her application reducing the amount of her monetary claim.

The Landlord and Tenant attended the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant submitted two applications for dispute resolution seeking compensation from the Landlord. The Tenant’s applications are related to two different tenancy agreements for renting two different rental units on the Landlord’s residential property.

The Residential Tenancy Branch joined the files to be heard together on the belief that the claims involved the same rental unit under a single tenancy agreement.

Since the applications are for different rental units, and different tenancy agreements, the Tenant was given the choice on which application would proceed, with the other application being dismissed with leave to reapply.

The Tenant chose to proceed with file #910032646. File # 210032305 is dismissed with leave to reapply.

#### Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

#### Background and Evidence

The parties testified that the tenancy began on May 1, 2020 and was on a month-to-month basis. The Tenant paid the Landlord monthly rent of \$1,120.00 by the first day of each month. The tenancy ended on April 28, 2021. The Landlord ended the tenancy by issuing a Two Month Notice to End Tenancy for Landlord's Use of Property.

On July 26, 2021 the Tenant amended her application stating that she has recalculated her claim and reduced her monetary claim amount to \$2,219.82.

The Tenant provided a monetary worksheet containing the following claims:

District of Summerland	Hydro	\$439.82
Tenant	Cleaning	\$50.00
Loss of Quiet Enjoyment	\$100 x 8 months	\$800.00
Repairs not done	\$50.00 x 11 months	\$550.00
Counselling	\$40.00 x 8	\$320.00
Digital temperature control	Heat	\$60.00
	total	\$2,219.82

#### Hydro Costs

The Tenant is seeking to recover a hydro utility overpayment. The Tenant stated that she realized that another occupant living on the residential property was using the electricity that she was paying for.

The Tenant testified that the Landlord told her to take \$30.00 off the rent; however, they agreed on \$80.00 per month. The Tenant stated that the \$1,200.00 monthly rent was effectively reduced to \$1,120.00 each month.

The Tenant testified that during the summer of 2020 the other occupant living on the property had more people move in which affected the hydro consumption which increased.

The Tenant provided a document listing 12 months of hydro charges and indicating a total amount owing of \$2,159.65 for the 8-month period. The Tenant did not provide a copy of the actual hydro bills. The Tenant's document indicates that half of the total hydro costs is \$1,079.82 and after applying the \$80.00 per month agreed upon by the Landlord, there is a balance owing to her of \$439.82.

In reply, the Landlord confirmed that he reduced the rent by \$80.00 per month due to the hydro usage. The Landlord stated that the Tenant's hydro bill was only \$90.00 each month.

The Landlord stated that the other occupant had a lady and her son move in without permission sometime in November 2020. The Landlord stated that he addressed the issue of guests with the occupant, and he ended up evicting the occupant in early January 2021.

### Cleaning

The Tenant stated that she had to have the small house cleaned before she moved in. The Tenant stated that she discovered that it was full of used needles. She testified that in April 2020 she cleaned the house and it sat empty for two months. She testified that she never had an opportunity to ask the Landlord about cleaning it because he was working up north.

The Tenant is seeking two hours of cleaning at \$25.00 per hour.

In reply, the Landlord testified that after the Tenant's mother passed away the small house on his property became available. The Landlord stated that the Tenant begged him to rent it to her, and he replied ok; however, it needed to be cleaned. The Landlord stated that the Tenant offered to clean the small house and in exchange the Landlord did not charge her rent for a month.

The Tenant stated that she did not agree to do the cleaning and stated she paid someone to deal with cleaning mouse droppings.

*Loss of Quiet Enjoyment*

The Tenant testified that she was having a problem with another occupant who was disturbing her, and the problem escalated when she moved into the smaller house. She testified that after 8 months the other occupants were evicted by the Landlord.

The Tenant testified that she could not use her back patio because of the two dogs owned by the other Tenants, and because the other Tenants threatened to kill her. She stated that she could not use the common areas due to the behavior of the other occupants. She stated that she was in non-stop fear. The Tenant stated that she called the police on occasion and reported her concern. She stated that one day in the summer of 2020 she was not permitted on the property by police who had apprehended a guest of the other Tenant hiding under the back deck.

The Tenant stated that she informed the Landlord about her concerns in March 2020 prior to moving into the small house. The Tenant is seeking to be compensated \$100.00 each month from May 2020 to December 2020.

In reply, the Landlord stated that the other occupant living on the property had lived there for 10 years. The Landlord stated that he had no knowledge of the occupant being a drug addict. The Landlord stated that he raised the issue of the occupant having his girlfriend and son on the property and when the Landlord went up north to work, the occupant brought them back to the unit. The Landlord stated that the occupant was subsequently evicted.

The Landlord stated that the Tenant was advising him on what was going on with the property on a day-to-day basis. The Landlord stated that there were verbal confrontations between the Tenant and the other occupant. The Landlord stated that he knew there was a problem, and he told the other occupant to leave the Tenant alone.

The Landlord stated that there is a 30-foot by 35-foot fenced grass area in front of the Tenants rental unit and she did not have to have any interaction with the back occupant. The Landlord stated that the other occupant informed him that the Tenant yelled and screamed at him.

The Landlord submitted that the Tenant's claim is an attempt to get back at him for ending her tenancy. The Landlord is not in agreement to pay any compensation to the Tenant.

### Repairs

The Tenant testified that the clothes washing machine broke down and she notified that Landlord in January 2021 and it was not repaired. The Tenant stated that she was going weeks without wash. The Tenant is seeking \$550.00 which is \$50.00 per month for 11 months. The Tenant provided photographs of the washing machine.

The Tenant testified that the toilet did not flush properly and leaked. The Tenant provided photographs of the toilet/ bathroom showing a few cracked tiles.

The Tenant stated that there was an unfinished addition to the house that had no siding and no power or heat to it.

The Tenant stated that she did not apply for dispute resolution for a repair order because she thought the Landlord would make repairs.

In reply, the Landlord stated that the washing machine was located in an insulated room outside the cabin and the switch in the washer was broken. He testified that he received a text message from the Tenant about the washer on February 5, 2021. He testified that he was not previously made aware of any problem with it. He testified that the washer let her down two or three times and he temporarily fixed it.

The Landlord stated that he installed the toilet in 1985 and it did leak and needed repair. The Landlord fixed the flushing/ running issue and had a contractor attend the unit in March 2021 who informed him that it would take 4-5 days to repair it fully.

The Tenant replied that she informed the Landlord about the washer in January 2021 and referred to documents located in her evidence.

### Counselling

The Tenant is seeking to recover the cost of \$320.00 for counselling sessions that she indicates she attended due to the behavior of the other occupant and due to a loss of heat to the rental unit. The Tenant stated that she attended 10 sessions starting in December 2020 until February 4, 2021. The Tenant provided a letter dated July 20,

2021 from a counsellor indicates that they worked on coping with and managing anxiety. The counsellor's letter includes that the Tenant's eviction from her home along with her living situation and her business caused her a great amount of stress and anxiety and were a detriment to her mental health.

In reply, the Landlord stated that there was always drama when dealing with the Tenant. The Landlord testified that the Tenant informed him that two people died at the property and when he checked with the police and ambulance, they knew nothing about it. He stated that he did his best by dealing with the RCMP and the Residential Tenancy Branch to get the delinquent occupant off his property. The Landlord provided a letter dated April 25, 2021 from another occupant living on the property that indicates that Tenant was yelling and displayed erratic and animated behaviour towards her.

### Digital Temperature Control

The Tenant testified that she did not know how to turn on the heat for the first 3 months. She stated that she needed to press a red button to get the heater to work. The Tenant testified that in November 2020 that she purchased a digital pad / thermostat to operate the heater and resolved the issue. The Tenant stated that the digital pad cost \$60.00 and she left it behind in the rental unit for use with the 30,000 btu heater. The Tenant provided a photograph of a large heating unit located inside the rental unit.

The Tenant stated that she believed the Landlord agreed to reimburse her for the cost of the thermostat.

The Landlord testified that the digital pad is in the house. The Landlord stated that if he would have received a receipt, he would have paid the Tenant for it.

The Tenant was asked if all of her claims had been considered and she replied yes.

### Analysis

Section 28 of the Act, provides that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29

- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

*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;***
- *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*

***[my emphasis]***

*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 who is claiming compensation to provide evidence to establish that compensation is due.*

Section 32(1) of the Act states that 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 the tenant.*

Section 7 of the Act provides,

*if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance*

*with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant 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 Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 67 of the Act provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the documentary evidence and oral testimony provided by the parties during the hearing, and on a balance of probabilities, I make the following findings:

#### Hydro Costs

I find that the Landlord and Tenant reached an agreement that the Tenant's rent would be reduced by \$80.00 per month starting May 2020 in exchange for the Tenant paying the entire hydro bill. There is insufficient evidence that the Tenant raised the issue with the Landlord again after this agreement, and nevertheless, a term or condition of tenancy may only be changed if both parties are in agreement.

The Tenant's claim to recover hydro costs is dismissed without leave to reapply.

#### Cleaning

The parties testified that the tenancy began on May 1, 2020. The Tenant is seeking compensation for cleaning the rental unit in April 2020 prior to when the tenancy agreement began. With respect to the dates mentioned above and the statement from the Tenant that she never had an opportunity to ask the Landlord about cleaning because he was up north, and she stated that she never agreed to do the cleaning.



The Tenant is not entitled to monetary compensation if there was no agreement beforehand that the Tenant would clean in exchange for compensation.

The Tenant's claim to be compensated for cleaning is dismissed.

### Loss of Quiet Enjoyment

I note that the Tenant's problems with the other occupant appears to have started before she entered into this tenancy. She testified that the problem escalated when she moved to the small house. Despite an existing problem, the Tenant asked to move into the rental unit. I am also mindful that the Landlord's testimony that he was informed by the occupant that the Tenant was yelling and screaming at the occupant.

I find that the Landlord took reasonable steps to deal with the other occupant that was living on the rental property. The Landlord was able to have the occupant evicted in January 2021 after he tried to deal with the issues more informally. I find that the Landlord did not fail to take action to protect the Tenant's right to quiet enjoyment.

However, I note that the Landlord was often out of town and I am satisfied that the Tenant experienced a loss of quiet enjoyment due to ongoing conflict with the other occupant living on the property.

Due to the above factors, I award the Tenant compensation in the amount of \$200.00 for loss of quiet enjoyment.

### Repairs

Section 32 of the Act provides that 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.*

With respect to an unfinished addition to the rental unit; the washing machine located outside the rental unit; and the source of heat to the unit, I find that the Tenant lived in a different unit on the residential property prior to moving into this rental unit. The Tenant also had an opportunity to inspect the rental unit prior to entering into the tenancy and was aware, or should have been aware, of the age and character of the rental unit before

she entered into the tenancy. I find that the Tenant is not entitled to compensation based the age and character of the rental unit.

The Tenant's documentary evidence establishes that the washer malfunctioned in late December 2020, and a text message dated February 3, 2021 from the Landlord indicates he was attending the unit to look at the washer. A text message from the Landlord dated February 22, 2021 indicates the Landlord was ordering a lid switch part.

I find that the washing machine malfunctioned for at least a couple months and I accept the Tenant's testimony that she went weeks without use of the washer.

With respect to the toilet, I find that the Landlord attended the unit to deal with repairing a flushing/ running water issue. While I accept the evidence that the toilet was leaky, I find that the Tenant did not provide an explanation on how the leak affected her. I find that it is difficult to quantify any amount of compensation for the leaking toilet.

With respect to the heater, I find that the heater was not broken, rather the Tenant did not understand how to use it for the initial 3 summer months. I find that the Tenant was able to use the heater thereafter and the heater provided heat.

With consideration to the loss of use of the washer, the leaking toilet, and the heater, I award the Tenant compensation in the amount of \$300.00 for loss of use of these items.

### Counselling

I have considered the Tenant's claim to recover costs for counselling sessions. I note that the Tenant chose to move back to the rental property knowing there was an existing problem. She stated that the problem escalated when she moved into the small house. I also note that the Landlord had a legal right to end the tenancy via issuance of a Two Month Notice. I find that any anxiety or stress suffered by the Tenant related to the end of the tenancy is not the responsibility of the Landlord. In addition, I accept the Landlord's submission that the Tenant contributed to the escalation of issues by yelling at other occupants. Finally, I am not satisfied that counselling was required, by referral from a medical professional rather than a personal choice to attend counselling.

The Tenant's claim for the Landlord to pay for the cost of counselling is dismissed.

### Digital Temperature Control

I find that the Tenant purchased a control to automate /assist with turning on the 30,000 btu heater. I find that the Tenant left the temperature control behind in the rental unit. I find that the Tenant did not have the Landlord's permission to purchase the temperature control; however, the Landlord indicated that he would have paid for it. In the circumstances, I award the Tenant the \$60.00 for the cost of the heater temperature control.

Pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of \$560.00. For enforcement, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Tenant is awarded \$560.00 for a loss of quiet enjoyment a loss of use of services or facilities, and the cost of a heater control.

The Tenant is granted a monetary order in the amount of \$560.00.

The Tenants other application # 21002205 is dismissed with 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: September 15, 2021

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Residential Tenancy Branch