



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL, MNDL, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on December 14, 2020, wherein the Landlord sought monetary compensation from the Tenant in the amount of \$4,354.55 in addition to recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on April 22, 2021. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. Should the Landlord recover the filing fee?

Background and Evidence

In support of the claim the Landlord's Property Manager, D.W., testified as follows. He confirmed that the tenancy began May 15, 2020.

The nature of the Landlord's claim relates to costs incurred due to a flood at the rental unit. In this respect the Landlord sought monetary compensation in the amount of \$4,354.55 for costs incurred to address the flooding at the rental unit.

The Property Manager testified that on July 18, 2020 at 12:33 p.m. the Tenant emailed to advise that he caused a flood by allowing the bathtub to overflow. The Property Manager stated that he understood the flood occurred the day before. A copy of the July 18, 2020 email was introduced in evidence and which read in part as follows:

"The bathtub overflowed in my apartment and caused some damage in unit below. The safety drain of the tub sucked in the shower curtains, preventing the drain.

I thought I had insurance but they said my account wasn't active.

Apologies for the inconvenience this causes you, I have talked with [M.] and she said she will contact you.

Please let me know what are some possible next steps I can take to remediate the problem."

The Property Manager stated that it was his understanding the Tenant had fallen asleep while running water, and the bathtub overflowed. The Property Manager stated that the Tenant and the caretaker had email communication wherein the Tenant accepted responsibility for the flood. Notably that email was not in evidence before me, nor was it provided to the Tenant.

The Property Manager confirmed that the total damages cost was in excess of \$50,000.00. The strata hired the remediation company to address the damage which was in turn covered by the Landlord's insurance. In the claim before me, the Landlord sought compensation from the Tenant for the following:

Insurance deductible	\$2,500.00
Insurance premium policy increase	\$218.75
Replacement of ceramic cooktop	\$1,535.80

<b>TOTAL</b>	<b>\$4,354.55</b>
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In terms of the crack on the cooktop, the Property Manager stated that after the remediation work was done on October 19, 2020 the Property Manager noticed the crack in the cooktop. He noted that during the move in, the cook top was not damaged. He also stated that he did not notice the cooktop was damaged when he went in to inspect right after the flood on July 19, 2020.

The Property Manager stated that initially the restoration company said they would look into the damage to the cooktop, and then looked at photos and denied responsibility.

The Tenant submitted in evidence a report from a plumber. In response to this the Property Manager submitted that the report lacks credibility. He noted that the date and time of the service call was September 8, 2020, yet the follow up report was signed on November 18, 2020. The Property Manager further noted that the Tenant failed to report any issues with the tub draining prior to the flood, nor did the previous tenants.

In cross examination the Property Manager confirmed that he did not inspect the overflow drain, nor did anyone hired by him. The Property Manager confirmed he had no knowledge of the use of the tub prior to the incident.

In response to the Landlord's claim the Tenant testified as follows. He stated that the shower curtain was not in the overflow as alleged by the Landlord, rather it was floating on the water.

In terms of the Tenant's text messages wherein he writes "I am sorry", the Tenant stated that he panicked, and as he was not an expert on plumbing issues, he might have apologized just to be nice.

The Tenant confirmed he was in the rental unit for approximately two months when the flood occurred. The Tenant also stated that prior to the flood, he never took a bath, as he normally showers, and this was the first time he had a bath.

In cross examination the Tenant confirmed that just prior to the flood he was preparing to have a bath. The Tenant stated that he could not remember the time he started the water, but he went to check some emails and shortly thereafter he noticed that the bath was overflowing. He could not recall how long this was.

He confirmed he hired a plumber to look at the overflow drain, and this plumber determined the drain was full of hair and other garbage and that the tub overflowed because “the drain wasn’t cleared properly”. A copy of this invoice, dated September 8, 2020, was provided in evidence before me. The Tenant confirmed that the plumber cleared out hair and debris following which the drain worked properly.

The Tenant also provide an inspection report from M.P. In this report, the plumber noted the overflow drain was clogged with hair and debris and failed the overflow test (which should drain the water and prevent overflow). The Tenant also submitted a photo of his bathtub overflow drain.

In terms of the damaged cooktop, the Tenant testified that he did not damage the cooktop. He noted that he did not reside in the rental unit for approximately three weeks from the end of September until the middle of October when the remediation occurred. He further stated that the stove was not damaged when he left for three weeks.

The Tenant acknowledged the crack was on the stove but stated that he first noticed the crack when he came back after the renovations were completed on or about October 16. The Tenant stated that he didn’t note what the restoration company was doing and thought they would take care of the crack. The Tenant stated that to his mind there was no one else in the unit except the renovation company.

The Tenant confirmed that he met the remediation contractor, M.T., but noted that M.T. was not on site during the renovation and did not, therefore, have personal knowledge of the renovation. He submitted that M.T.’s email of October 19, 2021, wherein he writes “I feel the crack was pre-existing” is merely his feeling.

The parties confirmed that the Tenant vacated the rental unit as of April 30, 2021.

### 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 Landlord 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.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

**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.

In this case the Landlord sought compensation for the costs incurred as a result of flooding at the rental unit as well as the cost to replace the glass cooktop.

The Landlord alleged the Tenant flooding the rental unit and the two units below when he left his bathtub running and it overflowed. The Landlord further alleged the Tenant damaged the cooktop.

After consideration of the testimony and evidence before me I find as follows.

I accept the Tenant's testimony that he had only lived in the rental unit for a short time when the bathtub overflow occurred. I also accept his testimony that this was the first time he had a bath as it was his usual routine to shower. On balance, I find it likely the Tenant ran the water for a bath, went to check his email, and forgot the bath was running. As it was not his normal practice to use the tub, it is not surprising he forgot to check on the water while he was distracted by his email. Had the Tenant been present while the tub was filling, he likely would have noticed, and cleared, the shower curtain which he wrote was being sucked into the drain. In failing to monitor the filling tub, I find the Tenant is partially responsible for the flood which occurred.

I also accept the Tenant's evidence that the overflow drain was not draining properly and was full of hair and other debris. This conclusion is supported by the plumber's report/invoice. These items likely impacted the functionality of the drain reducing its ability to drain the water as needed. I therefore find this malfunctioning drain to be a contributing factor in the flooding of the rental unit. As the tenancy had only just begun prior to the flood, I find it likely the hair and debris accumulated prior to this tenancy.

In the circumstances I find the Tenant to be 50% liable for the flooding at the rental unit. I therefore award the Landlord **\$1,250.00** representing 50% of the \$2,500.00 insurance deductible, as well as **\$109.38**, representing 50% of the insurance policy increase for a total of **\$1,359.38**.

On balance, I find the Landlord has failed to prove the Tenant damaged the cooktop. I find it more likely the cooktop was damaged during the remediation of the rental unit after the flooding. I have reached this conclusion based on the photos submitted in evidence which suggest a large object was dropped on the cooktop, presumably building materials during the remediation. I accept the Tenant's evidence that he was absent from the rental unit for approximately three weeks during the remediation and that it is more likely the damage occurred during this time period. I therefore dismiss this portion of the Landlord's claim.

As the Landlord has been partially successful in this claim, I award the Landlord recovery of the **\$100.00** filing fee for a total award of **\$1,459.38**. In furtherance of this I grant the Landlord a Monetary Order. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Landlord is entitled to the sum of **\$1,459.38** representing one half of the insurance deductible paid and one half of the increased insurance premiums as well as recovery of the filing fee. The Landlord's request for compensation for the cracked cooktop 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: September 20, 2021

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Residential Tenancy Branch