



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MARTELLO PROPERTY SERVICES  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, MNDCT, RR, PSF, MNRT, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- a monetary order for the cost of emergency repairs; and
- to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the first date scheduled, which was July 14, 2022, and I adjourned it to continue on August 11, 2022. The tenant and an agent for the landlord attended on both days, and the landlord was accompanied by another person, who did not testify or take part in the hearing.

The parties each gave affirmed testimony and the tenant called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

At the commencement of the first day of the hearing the landlord submitted that the tenant did not serve the Notice of Dispute Resolution hearing package in accordance with the Residential Tenancy Act, having received it on April 7, 2022 and sent on April 6, 2022. The record shows that the tenant made the application on March 23, 2022 and the hearing package and instructions were provided to the tenant on March 30, 2022.

The Act specifies that the hearing package must be served on the respondent within 3 days. The tenant responded that the Residential Tenancy Branch advised that there were issues with some of the email communications. The record shows that on April 5, 2022 the RTB received a call from the tenant indicating that the notice of hearing documents had not been received and the documents were re-sent by email to the tenant. The tenant attended at the RTB office in person the next day indicating that the documents had still not been received. The documents were then printed for the tenant and the tenant was provided with service instructions.

Considering the attention that the tenant paid to the timelines and had not received the documents until April 6, 2022, I find that the tenant has complied with the *Act*.

The parties agreed that all evidence has been exchanged, and no opposition of inclusion of any evidence was raised. All evidence has been reviewed and is considered in this Decision.

At the commencement of the first day of the hearing, the tenant applied to amend the application increasing the monetary compensation claim, which was opposed by the landlord's agent, and I reserved my Decision.

#### Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, specifically to extinguish a rodent infestation?
- Has the tenant established a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, specifically damages for loss of quiet enjoyment of the rental unit?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided, specifically storage and cable?
- Has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law, specifically storage and cable?
- Has the tenant established a monetary claim for the cost of emergency repairs?

#### Background and Evidence

**The tenant** testified that this tenancy started in June, 2009 as a sub-lease, and the tenant took over the lease in October, 2009. A copy of the tenancy agreement has

been provided specifying a fixed-term from October 1, 2009 until September 30, 2010, thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$930.00 was originally payable on the 1<sup>st</sup> day of each month, which has increased over time and is now \$1,191.00 per month, and there are no rental arrears. On September 8, 2009 the landlord at the time collected a security deposit from the tenant in the amount of \$465.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the top floor of a 2-storey building with a basement.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totaling \$14,937.57:

- One Time Reimbursements:
  - \$5,136.28 related to mice;
  - \$2,382.00 related to cable;
  - \$6,000.00 for lack of peaceful enjoyment/stress, etc.
- Additional Fees:
  - \$1,250.00 for hours spent preparing (approx. 50 hours x \$25/hr);
  - \$100.00 filing fee;
  - \$17.64 express-post;
  - \$11.36 registered mail;
  - \$40.29 for USB sticks and converter.
- Monthly Deductions:
  - \$95.00 / mon, plus tax, plus increase each January by 6.1% for cable;
  - \$85.00 / mon, plus tax for storage.

The tenant further testified that the tenant sent several emails to the landlord, with no response, and the tenant had to deal with a mouse infestation. Mice were in the furniture, and the tenant had to throw out an ottoman and recliner with the mice inside. A sofa, which the tenant still has also has holes in it, and photographs have been provided for this hearing. Also provided are an on-line shopping invoices of \$1,595.00 for a recliner, \$495.00 for an ottoman, and taxes of \$104.50, for a total of \$2,194.50.00 as well as \$1,969.99 for a sofa, \$236.40 for taxes, for a total of \$2,206.39. The photo in the website is similar to the sofa in the tenant's photographs. Also provided is a Home Depot receipt for mouse traps and steel wool dated February 15, 2022 in the amount of \$116.39. Numerous other photographs, receipts and websites have also been provided.

The tenant has also provided a copy of an email sent to the landlord dated February 9, 2022 asking for pest control. The landlord replied on February 10, 2022 telling the tenant to contact the property manager who was copied in the email strings. The tenant

sent an email to the property manager on February 14, 2022, but received no response. On March 8, 2022 the tenant sent a letter to the landlord by registered mail to the attention of "VC", Property Administrator setting out issues with the tenancy including cable service, storage and mice, but the tenant testified that no response was received.

The tenant's application to amend the monetary claim is with respect to cable, which is included in the rent, and also for storage. Cable was a material term of the tenancy agreement, and the tenant was specific with the landlord about needing cable, and that the tenant relies on it for her profession. The landlord breached that and made no reasonable offer, and the tenant requests full rent back. The tenant and her toddler are in a commercial, and even though the tenant has streaming services, the tenant has not been able to see it. The application is to amend the monetary claim related to cable from \$2,382.00 to \$7,146.00.

With respect to the tenant's \$6,000.00 claim for lack of peaceful enjoyment and stress, the tenant testified that the landlord refused to take any ownership or make any compensation about the cable being disconnected. Numerous emails were exchanged, then the landlord offered \$25.00, then \$38.00, then harassed the tenant about storage that the tenant has used since the beginning the tenancy. The emails from the landlord were daily, extremely stressful, and threatened to remove the tenant's items in storage and charge the tenant for the removal. Storage was open and available to all tenants. The tenant had a locker and several years into the tenancy found a mouse nesting in an ironing board cover. The tenant was expecting a child at that time and asked the landlord to move the items into an abandoned area, and the landlord agreed that the tenant could re-key and give the landlord a copy of the key. That was in 2018, but the current landlord's emails seek \$85.00 per month because storage is not mentioned in the lease. Notes are everywhere, requests of written proof; it has been stressful, and the tenant is still dealing with mice. A chain of emails has been provided about storage and the landlord has posted letters on the storage locker, the door of the rental unit, and constant emails. The landlord posted a sign, knowing it was the tenant's storage locker, drawing it to the attention of other tenants that the tenant had better storage than other tenants. Other tenants have now mentioned it, and one shouted at the tenant about it, but would not have known if the landlord hadn't posted the sign.

Once the situation with mice and cable started, the landlord felt that the tenant was a problem tenant, and was harassed about cable and a storage locker that the landlord now wanted the tenant to pay \$85.00 per month for.

With respect to the tenant's claim for monthly deductions, the tenant testified that the cable amounts to \$95.00 per month, plus tax, plus an increase each January by 6.1%. The tenant has provided a dated document from the USA showing certain trends, and testified that she could not find anything Canadian based, and claims the average compounded over 20 years.

The landlord said that notice was given about disconnecting cable, however, it just happened one day. The previous landlord gave a Notice of Termination dated June 1, 2018 stating that as of August 31, 2018 cable is removed and rent reduced by \$38.00 to \$1,078.00. However, also provided for this hearing is a letter from the previous landlord dated August 1, 2018 rescinding the Notice of Termination of cable. In February, 2022 the current landlord's employee sent an email stating that previous owners gave a Notice to Terminate the cable and a rent rebate was given in 2018. No termination of services happened at that time and the tenant continued to pay rent in full. It would cost the tenant over \$100.00 per month, which the tenant cannot afford.

The tenant sent an email to the landlord explaining again that cable was removed without notice and the amount to reinstate the service, and the reconnection fee of \$50.00 is to be reduced from the tenant's rent according to the *Act*. The monthly cost according to Shaw Cable is \$95.00, plus 12% tax is \$106.40 per month. A transcript of the tenant's call to Shaw Cable has been provided for this hearing. The Shaw operator confirmed that the closest package for Digital Classic is Total TV as the company no longer offers Digital Classic. However, the landlord insists that the landlord is only responsible for reducing rent for basic cable services, which is not what the tenant previously enjoyed. The service that the tenant had prior to disconnection was Digital Classic.

The tenant also claims \$85.00 per month, plus tax for storage if the tenant is required to lose the storage unit.

**The tenant's witness** has lived in the rental building for 35 years, since 1987 and has known the tenant for 15 or so years. When tenants move in, they are assigned a locker as part of the tenancy agreement for no cost.

Since the beginning of the witness' tenancy, cable has been included in the lease, but was recently cut off without any notice by the landlord's management, effective January 31, 2022. The witness had received a letter from Shaw Cable, because the witness pays extra for extra channels, which stated that the contract with the building was cancelled and suggesting that the witness might want to make other arrangements. The witness contacted the building manager who said that the building was sold and

that post-dated cheques would be returned, and cable would be returned. The cable company said there would be a grace period, but did not provide one, and there was no notification from the building management. At midnight on February 1, 2022 new owners took possession, and the old owner cut off the cable right away.

The witness is a friend of the tenant and noticed that the tenant was visibly incredibly upset about loss of storage and cable, as well as mice in the rental unit, and in a state of disbelief. It preyed on the tenant's mind, who works as a TV and commercial actress. The tenant mentioned to the witness a couple of times how important it is for the tenant to have cable as part of her work.

A mouse problem has existed in the building for as long as the witness has lived there. Pest people have been by and there are poison containers around the building and in the laundry room and hall. The tenant has told the witness that the landlord refused to do anything about it.

The primary concern for the witness is the cable, and was not happy with it or the way it was handled. The witness was offered an amount by the landlord and the witness accepted it, then found out that the landlord had offered other tenants more money on a piece-by-piece basis. That did not sit well with the witness, that whoever argued the case better got more money; totally unfair. The witness and some other tenants have filed an Application for Dispute Resolution.

**The landlord's agent** testified that the building had a change in ownership effective February 1, 2022 and the new landlord did not get complete records from the previous property manager. Issues such as mice and rescinding the notice to remove cable were not known by the new management, or how cancellation was handled by the previous owner, so the landlord enforced the cancellation.

The landlord found out from a tenant, not a realtor or previous owner, that the cancellation was rescinded, and there was extensive communication. No notice was sent to the tenants, however, based on the realization that the cancellation was rescinded, the landlord offered compensation of \$50.00, but the tenant did not accept it. The tenancy agreement did not specify what kind of cable the tenant had enjoyed, and since a basic package costs \$38.00, plus tax, the landlord rounded it up to \$50.00 out of good will.

The tenant's lease signed with the previous owner does not include a storage locker, which is what the landlord was going by. Later, the landlord discovered that there was a deal with the tenant and the building manager at the time to allow the tenant to store her

items, not in a locker, but space by the staircase. The building manager had noticed the items stored there and the landlord sent emails to all tenants to find out who they belonged to. The tenant received a notice by mail and then email on February 24, 2022 that the items needed to be removed by March 4, 2022. However, after the landlord's agents started to prepare for this hearing, the landlord's agent understands that the space by the staircase is the storage locker for the tenant, and the landlord did not enforce the \$85.00 per month payment or removal of the tenant's items.

With respect to mouse treatment, the landlord has an on-site caretaker available 24/7 who usually answers phone calls all hours. The tenant testified that she couldn't get ahold of the caretaker to schedule treatment, but that might not be accurate. The landlord uses email to communicate with tenants, and the landlord's agent received an email from the tenant on March 23, 2022 requesting treatment. Treatment was provided on April 4, 2022 and the report obtained from the pest control company mentions that the tenant's apartment is cluttered and it's difficult to do a full treatment. The landlord has provided a copy of an email sent to the tenant dated June 24, 2022 asking if the first treatment was sufficient. The tenant never followed up with the landlord about any more treatments, so the landlord considered it closed.

The landlord's agent also submits that the tenant's evidence about average cable prices in the USA should not be considered as a reliable source.

#### SUBMISSIONS AND RESPONSE OF THE TENANT:

The day that the pest control company was to attend the rental unit, since the tenant has a toddler, the tenant had to move the child's things to the middle of the floor, so any clutter was done to make space for traps. It's a 1 bedroom unit, and the tenant has moved things away from walls and things in anticipation of traps being placed. The tenant also moved the fridge to clean the gyprock behind, and mice had been chewing on structural things, including wires. There is no food lying found in the tenant's home.

#### SUBMISSIONS AND RESPONSE OF THE LANDLORD'S AGENT:

The issue is how to determine the cost of cable, furniture and other claims. The landlord does not deny there have been issues, and tried to negotiate with the tenant, but was unsuccessful.

#### Analysis

Firstly, where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

- that the damage or loss exists;
- that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
- the amount of such damage or loss; and
- what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the tenant claimed \$2,382.00 for loss of cable and storage and has applied to increase the claim to \$7,146.00, as well as a reduction in rent of \$95.00, plus tax, plus an increase each year by 6.1% for cable; and \$85.00 per month, plus tax for loss of storage. The landlord has agreed to allow the tenant to keep the storage, and the tenant hasn't actually lost it. Therefore, I order the landlord to honour the agreement that the tenant be permitted to use the area that the tenant currently uses for storage of her items until the tenancy ends in accordance with the law, and I dismiss the monetary claim for storage.

With respect to loss of cable, the *Act* does not permit a landlord to remove a service or facility that is essential or a material term of the tenancy, and if it is not essential or a material term, the landlord must give the tenant 30 days notice to remove the service or facility and reduce rent accordingly. It's very unfortunate that the previous landlord did not provide full documentation to the current landlord, but that does not negate the responsibilities of the current landlord. The tenant and the tenant's witness both testified that there was no notification, and the landlord negotiated individually with tenants.

The tenant also testified that the cable service that was enjoyed was material to the tenancy and that the tenant was specific about needing cable and relies on it for her professional. In the absence of any evidence from the landlord, who does not deny that it was rescinded and then replaced again by the previous landlord, I accept that cable was a material term of the tenancy. Therefore, the landlord may not remove that service, and I order that the landlord return cable to the tenant in the same services that had been provided previously. If no such package is currently available from cable companies, the nearest package that has no less channels than the previous package had included is to be provided to the tenant effective immediately. In the event that cable is not reinstated to the rental unit by August 31, 2022 I order that the tenant be permitted to reduce rent by \$106.40 for each month that cable is not available to the tenant, commencing with September 1, 2022.

I have also reviewed the cable document provided by the tenant, and I agree with the landlord's agent that considering the date and that it is not Canadian, it really cannot be



relied upon, but the transcript with Shaw Cable can be relied upon. The cable was cut off on February 1, 2022, and the cost to connect it is \$50.00 in addition to \$106.40.00 per month. From February to August, 2022 is 7 months, and I find that the tenant has established a claim of **\$744.80** ( $\$106.40 \times 7 = \$744.80$ ) for loss of use of cable.

With respect to the tenant's claim of loss of quiet enjoyment, the tenant has applied for \$6,000.00 in addition to \$5,136.28 related to mice. I find that the claim related to mice is included in the claim for loss of quiet enjoyment. I refer to Residential Tenancy Policy Guideline 6 – Entitlement to Quiet Enjoyment, which states, in part:

A tenant is entitled to quiet enjoyment, including, but not limited to the rights to: • reasonable privacy; • freedom from unreasonable disturbance; • exclusive possession, subject to the landlord's right of entry under the Legislation; and • use of common areas for reasonable and lawful purposes, free from significant interference

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

The tenant's evidence suggests that the tenant complained to the landlord about mice on February 8, 2022 and March 23, 2022. The evidence also suggests that the pest control completed a treatment in April, 2022, and in June the landlord assumed it had been taken care of. The landlord also suggests that the tenant's rental unit needed to be cleaned, which was disputed by the tenant.

The tenant's application for loss of quiet enjoyment refers to numerous attempts by the landlord to change the terms of the tenancy agreement and the stress caused by that,

as well as the stress caused by mice. I also consider that the tenant has a young child living in the rental unit.

The tenant's application also seeks monetary compensation for the cost of emergency repairs. The *Residential Tenancy Act* defines what repairs qualify as emergency repairs, and no evidence from the tenant supports monetary compensation for emergency repairs. I dismiss that portion of the tenant's application.

However, there is still evidence of mice, and I order that the landlord comply with the *Residential Tenancy Act* by continuing to retain the services of pest control personnel to rid the rental unit of mice.

The *Act* does not permit me to make any monetary orders to punish a party, but allows me to make a monetary order for nominal damages where no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the tenant's \$6,000.00 claim for loss of quiet enjoyment is excessive considering that the time elapsed since the new landlord purchased the building is less than 7 months. I find that the tenant has established nominal damages in the amount of **\$500.00**.

With respect to the tenant's claims for hours spent preparing for the hearing, the cost of express-post and registered mail, and for USB sticks and a converter, the *Act* permits recovery of a filing fee if the applicant to dispute resolution is successful, but does not permit the costs of preparing for a hearing or serving documents. Therefore, those claims are dismissed. However, since the tenant has been partially successful with the application, the tenant is entitled to recovery of the **\$100.00** filing fee.

### Conclusion

For the reasons set out above, and by consent, that the landlord allow the tenant to use the space that the tenant currently uses for storage without any cost to the tenant until the tenancy has ended in accordance with the law.

I further order that the landlord return cable to the tenant in the same services that had been provided previously. If no such package is currently available from cable companies, the nearest package that has no less channels than the previous package contained is to be provided to the tenant effective immediately.

In the event that cable is not reinstated to the rental unit by August 31, 2022 I order that the tenant be permitted to reduce rent by \$106.40 for each month that cable is not available to the tenant, commencing with September 1, 2022.

I further order the landlord to comply with the *Residential Tenancy Act* by continuing to retain the services of pest control personnel to rid the rental unit of mice.

The tenant's application for a monetary order for the cost of emergency repairs is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,344.80** and I order that the tenant be permitted to reduce rent for future months until that amount has been realized, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

This order is final and binding and may be enforced.

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: August 22, 2022

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Residential Tenancy Branch