



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNRT, MNDCT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (*the "Act"*) and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order to recover the cost of emergency repairs made by the tenant during the tenancy pursuant to section 33; and
- A monetary order for damages or compensation pursuant section 67.

Both the tenant and the landlord IS attended the hearing. As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceedings. The tenant confirmed receipt of the landlord's evidence package.

### Preliminary Issue

At the commencement of the hearing, the tenant testified that her legal advocate did not serve the landlord with copies of her evidence. The tenant also testified that she did not have any of her evidence in front of her as the original evidence is currently with her advocate. The tenant did not seek an adjournment of the hearing.

At the commencement of the hearing, I advised the tenant that documents that were not exchanged with the landlord could not be referred to in this decision in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure, but that oral testimony would be accepted. It wasn't until the end of the hearing that the landlord acknowledged receiving the tenant's evidence package, as the landlord wanted me to refer to items in the tenant's evidence. At that point, I advised the parties that I would accept the documentary evidence supplied by the tenant. I would do so in accordance with Rule 7.4 of the Rules which states that evidence must be presented by the party who submitted it. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Is the tenant entitled to the monetary orders she seeks?

Background and Evidence

At the commencement of the tenant's testimony, I asked the tenant how she arrived at the sum of \$4,036.00 as the amount of compensation she seeks for monetary loss. The tenant did not have any of her evidence before her, so she was unable to provide details about her claim. She thinks the amount is the sum of all the invoices she has, however she was unable to verify.

Although each party provided testimony regarding each element of the tenant's claim, both are recorded together for ease of reading. The tenant did not provide a monetary order worksheet, so the bullet points in her application were used as a guide to the tenant's claim:

<input checked="" type="checkbox"/> I want compensation from the landlord for monetary loss under the Act, regulations and/or tenancy agreement	Total amount you are seeking: \$ 4036.00
Please describe why this is being requested: • Hotel cost incurred while entire unit painted (Nov 11, 2020) • Moving costs to relocate to new residence as unit was not as advertised and was in need of constant repairs. • All food spoiled when fridge stopped working • Had to dispose of some personal property due to silverfish infestation. • Had to replace mattress & linens due to urine saturated carpet in bedroom. • Tenant not informed of rat poison on property, dog ingested and required emergency vet visit. • Increased Hydro usage while furnace was not working. (Oct 28 - Jan 5)	

1. Hotel Cost incurred while entire unit painted

**Tenant:** the landlord told her the unit was in great condition. When she moved in, the tenant noticed smudge marks on the wall and it needed a repainting. The tenant wanted a calm place and the landlord assured her it would be repainted. The tenant did not request the painting, it was the landlord's decision to do so. During the painting, the tenant needed somewhere to stay. It needed to be in a place accessible to her children's father because the tenant hadn't seen her kids in weeks.

**Landlord:** The tenant viewed the unit before moving in and insisted it be repainted although the landlord advised her it would be disruptive on her. The landlord testified that items such as room service and meals is exorbitant and so is staying at a 5-star hotel in downtown Vancouver when the tenant lives in the suburbs.

2. Moving costs

**Tenant:** There were ongoing issues with the unit causing her to want to leave. It wasn't the beautiful townhouse the landlord told her it was going to be. The tenant does not have a cost for the moving to put forward for her claim.

**Landlord:** we, as landlords were asked to sign a mutual agreement to end tenancy. based on fact that tenant wanted to move out. that decision based on tenant wanting to move out. we refunded security deposit, and pet damage deposit. Not our decision to have her move out.

3. Food spoiled – fridge not working

**Tenant:** the week before Christmas 2020 the fridge stopped functioning. The landlord's son never fixed it properly. The tenant does not have a figure as to how much food was lost, but it all had to be thrown out.

**Landlord:** There was a small nick on the top of the fridge which her son, an appliance electrician looked at, ordered parts, and fixed. The operating temperature of the fridge was within normal range and wouldn't cause food to spoil or freeze.

4. Silverfish infestation

**Tenant:** everything in the master bedroom was infested with silverfish. No photos were provided and no cost estimate for this was presented.

**Landlord:** no evidence of silverfish. If they were informed, the landlords would have called in a specialist. No proof of silverfish has been presented.

5. Urine

**tenant:** when she moved in, she put her mattress on the carpeted small bedroom. When she set it up, she noticed a urine smell from the previous tenants.

**Landlord:** There is no proof of a dog urine issue. The tenant knew the carpets were freshly shampooed the day before she moved in, so why put a mattress on the carpets that may not be dry. No smell was addressed during walkthrough.

6. Rat poison

**tenant:** her small dog ingested rat poison tucked into a corner by the stairs. The tenant had a large vet bill, though she cannot recall how much it was.

**Landlord:** When the tenant informed the landlord about potential rats, the landlord was concerned. An exterminator was called and he put out traps, not poison.

7. Increased hydro

**Tenant:** her heat sopped working in on the first of January 2021. She called her ex-father-in-law to take a look. When they couldn't fix it, they had to call out a heating company "M" to come do the repairs. The tenant had to use extra electricity to heat her home while the hydro was out. The tenant does not know the extent of the extra hydro.

**Landlord:** the bills provided by the tenant are not indicative of any additional hydro being used during the time the furnace stopped working.

The second issue identified by the tenant in her application was for the cost of emergency repairs to the rental unit.

Section 4: Tenant Issues: (select all that apply)	
<input checked="" type="checkbox"/> I want to be paid back the cost of emergency repairs I made during the tenancy	Total amount you are seeking: \$ 972.90 incl..
Please describe the damages, incurred costs and attempts at compensation:	
Gas furnace working improperly since November 1 <sup>st</sup> , 2020 causing increased gas usage.	
Gas furnace stopped working completely on January 1 <sup>st</sup> , 2021. Landlords informed and was instructed to get it repaired and put on tenant credit card and landlord will repay tenant. Furnace was finally repaired on January 5 <sup>th</sup> , 2021. Tenant incurred increased Hydro usage due to use of space heaters to keep warm. No response from landlords since as	
<input type="checkbox"/> I want the landlord to return my personal property	to repayment.

visa interest 19.99% since Jan 1 2021

**Tenant:** she paid the heating company "M" the amount of \$469.35 to take a look at the furnace. "M" was unable to do immediate repairs, but the diagnosis cost the tenant the

amount shown above. The tenant seeks \$972.90 because of the 19.99% interest charged by her credit card company, however the tenant was unable to present the credit card statement as evidence or a spreadsheet showing interest calculations to corroborate the interest sought.

**Landlord:** the igniter went out on the furnace. With Covid and the supply chain issues, it took a day or two to get the replacement igniter installed by a different contractor as “M” didn’t have any supply in stock. The landlord provided her credit card number via a photo of the card to pay “M” for the initial callout.

### Analysis

Section 7 of the Act states: 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.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Rule 7.4 states: Evidence must be presented by the party who submitted it, or by the party’s agent.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

In this case, the tenant did was unable to present her evidence, as none of her evidence was before her. There is no indication that the tenant made any effort to obtain copies

of her evidence package prior to the hearing or contacting her legal advocate to determine whether the advocate was going to appear at the hearing.

First, the tenant has the onus to prove, on a balance of probabilities, that her version of events is the most likely to be accurate. I am not satisfied this is the case. The tenant's reasoning for spending the night in a five-star hotel in downtown Vancouver while the unit is being repainted is unjustified, given that the tenant lives approximately an hour away in the suburbs. I also find it more likely than not that the painting of the unit was done at the tenant's request, not because the landlord insisted upon it. I find there has been no breach of the Act and therefore no damage from it.

I find the tenant has provided altogether insufficient evidence to corroborate her claim for silverfish infestation, dog urine smells, rat poisoning of her pet, and food spoilage. No photographs of any of these issues were presented as evidence and the only evidence I have of any of this is the tenant's testimony. While her testimony does bear some weight, I find that in order for me to find in favour of the tenant, I require more than just her words. I find the tenant has not met the burden of proof to satisfy me there was any breach of the Act justifying compensation under sections 7 and 67 of the Act.. (points 1 and 2 of the 4-point test). Further, I find there is altogether insufficient evidence to prove the value of the damage or loss (point 3 of the 4-point test). Lastly, the tenant has not mitigated her claim in any way. For example, choosing the 5-star hotel in downtown Vancouver with room service is an extravagance that a landlord should not be required to pay, even if I were to find the landlord had breached the Act and was required to pay compensation.

For these reasons, the tenant's application seeking \$4,036.00 is dismissed without leave to reapply.

The second portion of the tenant's claim is for compensation pursuant to section 33(5) which states;

(5)A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a)claims reimbursement for those amounts from the landlord, and
- (b)gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

An emergency repair includes a repair to the primary heating system.

I find that the tenant's heating system was faulty and pursuant to section 32, it is the landlord's responsibility to have it fixed. In the evidence before me, after "M" inspected the furnace, the landlord called "M" to have the cost of the emergency repair paid for by the tenant reversed and charged to the landlord's credit card. This has not yet happened for reasons unknown. As I find that the landlord is liable for compensating the tenant with the cost of the emergency repair, I award the tenant \$469.35 as the amount for emergency repair. Interest on that amount is not awarded.

Conclusion

The tenant is granted a monetary order in the amount of \$469.35 pursuant to section 67 of the Act.

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: December 06, 2022

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Residential Tenancy Branch