



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding OHM PROPERTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, MNRT, MNDCT, FFT**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for compensation for emergency repairs made during the tenancy pursuant to Section 33 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agents, HW and CC, and the Tenant, KM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by attaching a copy to the Tenant's door on September 27, 2022, Tenant confirms receipt, deemed served on September 30, 2022; and,

- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on October 22, 2022, the Landlord confirmed receipt, deemed served on October 27, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Preliminary Matter

The Tenant vacated the rental unit on October 26, 2022. As the tenancy has ended, the Landlord's One Month Notice is cancelled, and the Tenant's request for emergency repairs is dismissed without leave to re-apply.

### Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on January 1, 2018. The fixed term ended on December 31, 2018, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,537.50 payable on the first day of each month. A security deposit of \$1,250.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant testified that leaks in the home have been a common feature in the residential premises for the past four years. She uploaded texts and emails that discuss leaks occurring, the earliest from April 5, 2019, from upstairs to the downstairs rental unit. The Tenant uploaded a text message from a previous basement tenant which stated, "*[name] should have records of all the plumber interactions, if not I can definitely vouch that we had the one plumber come in three separate times ... for the leaking ceiling light. Once they ripped out the entire wall between the laundry and the bathroom.*" The property manager wrote, "*The fact that you volunteered to do the work*

indicated you acknowledge fault for the situation, but the plumbers bill is not part of that somehow.” The Tenant replied,

*I volunteered because as I mentioned before after talking to the RTB they said both owners and tenants have a responsibility to reduce cost and reduce any further damage. I said that I would do my part in that as I know if damp drywall sits it can grow mold. I took it upon my self and made sure that would not happen as I didn't want to live somewhere with mold growing. This does not indicate fault. This would indicate being helpful and taking action to help a shitty situation.*

There was a concern about costs and if the Tenant got hurt doing the drywall repairs. In the end the property manager told the Tenant to go ahead with the drywall repair work on September 10, 2022 at 11:24 a.m. The Tenant testified that she had the old drywall down and the new drywall up by the end of that day. The Tenant completed all the drywall repairs on October 19, 2022. The Tenant uploaded an invoice for the work she completed, she outlined:

<i>20 hours for drywall removal, disposal and repairs</i>	
<i>4 drywall sheets</i>	
<i>Drywall mud and tape</i>	
<i>Paint</i>	<i>\$1,000.00</i>
<i>GST</i>	<i><u>\$50.00</u></i>
<i>TOTAL</i>	<i>\$1,050.00</i>

The Tenant said the previous property management company would send landscapers out when big jobs in the garden were needed. The new property management company would not send out landscapers. The Tenant took it upon herself to complete some needed outside work. The Tenant uploaded an invoice for the landscaping work she completed. The individual items she is claiming compensation for are:

<i>Landscaping and tree work Trimming of backyard hedge x2</i>	<i>\$200.00</i>
<i>Lifting of canopy of walnut and fur tree so its off garage roof and clean up</i>	<i>\$200.00</i>
<i>Trimming of lilacs and hazelnut to a managable level and off the roof of the</i>	

<i>west side of house and clean up</i>	<i>\$250.00</i>
<i>Removal of ivy on all sides of chimney.</i>	
<i>Prevention of roof damage and clean up</i>	<i>\$250.00</i>
<i>Trimming and top of cedar hedge in front of house for manable height and clean up</i>	<i>\$75.00</i>
<i>Trimming and lowering of boxwood hedging</i>	
<i>Removal of two volunteer maples growing in hedge and into powerlines and clean up</i>	<i>\$300.00</i>
<i>Cut and Removal of invasive plants front yard. Clean up</i>	<i>\$300.00</i>
<i>Trimming and continued shaping if cedar ball front yard</i>	<i>\$75.00</i>
<i>Removal of old rotten wood in back yard and prepare and lay grass seed</i>	<i><u>\$200.00</u></i>
<b>TOTALING</b>	<b>\$1,942.50.</b>

An addendum to the tenancy agreement initialled by the Tenant and the previous landlord states:

9. *GARDENING – The tenant understands and agrees to maintain the lawn and grounds. There will be no tools provided by the landlord. The tenant may not cut down or remove any trees, plants or shrubs.*

The Landlord's Property Manager stated that there was no formal discussion in regards to landscaping being completed by the Tenant. The Landlord's Property Managers rely on RTB Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises and they point to #'s 1 to 3 of the Property Management part of the Policy Guideline which states:

1. *The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.*
2. *Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.*
3. *Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting*

*grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.*

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### ***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.*

...

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, “*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.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

### *Drywall Repair*

Although the Tenant assisted with drywall repairs to the rental unit, she denies responsibility for the water leak. The Tenant stated that leaks in the residential property were a common feature of the home over the past four years. The Landlord brought in a plumber to assess the damage caused by a leak that occurred and the plumber could not replicate the leak. The Tenant assisted with repairs because it was in her line of work and she had most of the supplies and tools at the ready. She knew that to leave the wet drywall, there was a risk of mould developing. I find, pursuant to Section 32(1), it is the Landlord's obligation to provide and maintain the residential property in a state of decoration and repair that makes it suitable for occupation by a tenant.

I find the Tenant has proven on a balance of probabilities that it was the Landlord's responsibility to maintain the residential property. The Tenant was the tradesperson who did the drywall repairs avoiding issues with mould build up and I grant the Tenant the amount of her invoice for the drywall repair work totalling **\$1,050.00** pursuant to Section 67 of the Act.

### *Landscaping*

The addendum to the tenancy agreement states "*The tenant understands and agrees to maintain the lawn and grounds. ... The tenant may not cut down or remove any trees, plants or shrubs.*" The Tenant had a limited scope of responsibility in maintaining the property. I find that some of the landscaping work completed by the Tenant was her responsibility, while some of the work was not. The addendum stated the Tenant was not to cut down or remove any trees, plants or shrubs.

I note that some of the work that goes beyond the requirements in the tenancy agreement addendum were most probably for the best of the garden. The Tenant had no further agreements about yard care with the Landlord or the Property Managers and I cannot find that the Tenant has proven that the Landlord must compensate her for this work. I deny to award the Tenant compensation for the landscaping work which she completed on the residential property.

As the Tenant is semi successful in her claim, she is entitled to recovery of the **\$100.00** application filing fee pursuant to Section 72(1) of the Act. The Tenant's total monetary award is \$1,150.00 (\$1,050.00 + \$100.00).

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$1,150.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 28, 2023

---

Residential Tenancy Branch