



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNDCT, RR, PSF

### **Introduction**

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenant November 28, 2022 (the “Application”). The Tenant applied:

- For compensation for monetary loss or other money owed
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law

The Tenant appeared at the hearing. H.B. appeared at the hearing for the Landlord. G.B. called into the hearing 37 minutes late.

The Tenant only proceeded with the compensation request.

Both parties provided evidence for the hearing. H.B. confirmed receipt of the hearing package and Tenant’s evidence. The Tenant had not received the Landlord’s evidence; however, the Landlord only provided a tenancy agreement, BCSC documents and prior RTB files. I do not find service of the Landlord’s materials to be an issue given the nature of the documents provided.

The parties were given a chance to present relevant evidence and submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

**Issues to be Decided**

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

**Background and Evidence**

The Tenant sought:

Item	Description	Amount
1	Internet utility	\$765.00
2	Air mattress	\$99.98
3	Distilled water bottles	\$39.27
4	Distilled water bottles (lost receipts)	\$80.00
5	Security deposit	\$450.00
6	10 days in March	\$300.00
7	Nonpecuniary damages	\$300.00
	<b>TOTAL</b>	<b>\$2,034.25</b>

The written tenancy agreement provided by the Landlord is not signed by the Tenant and I understand from the Tenant's submissions that the Tenant did not agree to the written tenancy agreement.

When asked about the tenancy agreement in this matter, the parties agreed on the following. The tenancy started September 01, 2022. The agreement was verbal. The tenancy was month-to-month. Rent was \$900.00 due on the first day of each month. A \$450.00 security deposit was paid.

The parties agreed the Tenant moved out of the rental unit March 22, 2023.

***#1 Internet utility \$765.00***

The Tenant submitted that internet was included in rent as shown in the audio provided. The Tenant said they had internet access for the first two months of the tenancy but then the Landlord turned off access to it November 02, 2022. The Tenant said they had to use their phone for internet which increased their phone costs.

H.B. said internet was not part of the tenancy and the password was only given to the Tenant because it takes time to set up an account. H.B. said the Tenant was supposed to get their own internet.

In reply, the Tenant noted a prior hearing where the Landlord simply denied switching off the internet.

**#2 Air mattress \$99.98**

The Tenant said the Landlord's son smashed a window of the rental unit which caused glass to damage an air mattress that was in the unit. The Tenant seeks the cost to replace the air mattress.

H.B. said they are not aware of the Landlord's son smashing a window in the rental unit.

**#3 Distilled water bottles \$39.27**

**#4 Distilled water bottles (lost receipts) \$80.00**

The Tenant said the Landlord turned the water to the rental unit off on November 02, 2022. The Tenant said they did not have water for November and December. The Tenant said the Landlord turned the water back on January 10, 2023, but only cold water. The Tenant said the Landlord agreed to return the hot water to the rental unit March 21, 2023, but never did and the Tenant moved out.

H.B. said the water to the entire house was turned off because the Tenant flooded the house by leaving the water on all day long. H.B. said the Tenant also plugged the toilets in the unit. H.B. said the parties had an RTB hearing about this. H.B. said the water was turned off and on but was turned on for good mid January when it was safe to do so.

**#5 Security deposit \$450.00**

The Tenant said they had not provided the Landlord a forwarding address in writing.

**#6 10 days in March \$300.00**

The Tenant seeks pro-rated rent for March because they moved out March 22, 2023. The Tenant said they gave notice ending the tenancy on March 22, 2023. The Tenant

said under section 45(3) of the *Act*, the Landlord failed to comply with a material term of the tenancy.

H.B. said the Tenant gave notice ending the tenancy March 22, 2023, and only left because the Landlord had a Writ of Possession and were going to have bailiffs remove the Tenant.

In reply, the Tenant said the Writ of Possession was stayed.

***#7 Nonpecuniary damages \$300.00***

The Tenant said they are seeking compensation for loss of dignity because they could not use the bathroom for two months of the tenancy. The Tenant also said the Landlord has caused them stress by making them come to RTB hearings to deal with the issues in the tenancy.

H.B. disputed that the Landlord owes the Tenant compensation because of the damage the Tenant caused the Landlord. H.B. referred to the Tenant flooding the basement and the resulting plumbing bills.

The parties agreed there had been prior RTB hearings between them. I have only been able to find the following files between the parties:

- File ending 810
- File ending 786
- File ending 957

I have reviewed the Decision on the above files. I have not reviewed the evidence on the prior files because the parties had to provide that evidence on this file if they wanted it considered.

File ending 810 addresses internet and water issues in the rental unit but the Arbitrator did not decide if the Tenant was entitled to compensation for these issues.

In the file ending 957, the Landlord said the Tenant intentionally flooded the rental unit in January and February 14 of 2023. The Arbitrator said the Landlord provided photos and a video from January 06, 2023, showing the rental unit flooded and the kitchen faucet running when the Tenant was not in the rental unit. The Arbitrator stated:

Based on the undisputed and convincing testimony offered by the landlord and witness HB, the photographs and the video, I find...the tenant seriously interfered with the landlord by intentionally flooding the rental unit...

In file ending 786 from March 21, 2023, the Arbitrator stated:

Further the landlord acknowledged shutting off the water to the rental unit. The landlord described conflicts that had arisen between the landlords and the tenant and said that the landlord had been left with no alternative but to shut off access to the hot water due to perceived abuses of the hot water by the tenant...

I find access to hot water is essential to the tenant's use of the rental unit. The landlord has no right to restrict this service despite any issues he may have with the tenant. I order the landlord to maintain the tenant's access to hot water at all times and not to purposely restrict the tenant's access to the hot water.

### **Analysis**

The Tenant has the onus to prove their claim under rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7 of the *Act* sets out when compensation should be paid.

Policy Guideline 16 addresses compensation and states:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

**#1 Internet utility \$765.00**

The Tenant provided phone bills, a video from November 28, 2022, showing they could not access the Landlord's wi-fi and a recording of their conversation with the Landlord about the tenancy at the start of the tenancy.

I accept wi-fi access was included in the tenancy agreement between the parties. While talking about the details of the tenancy, the Tenant asked about wi-fi and the Landlord referred them to the "Google Guest" note and password to access wi-fi. The Landlord did not say access to wi-fi was temporary. The Landlord did not say the Tenant had to get their own wi-fi. The Landlord did not clarify that wi-fi was not included in the tenancy. I find the parties, by their conversation, agreed the Tenant could access the Landlord's wi-fi as part of the tenancy.

I also note that the Tenant asked the Landlord to do a written tenancy agreement and the Landlord said they did not have time to and would do one later. In my view, the Landlord is at fault for any misunderstanding between the parties about what was and was not included in the tenancy because the Landlord failed to have a written tenancy agreement signed outlining the details of the tenancy despite the Tenant asking for this.

I accept the Landlord blocked access to the wi-fi based on the video provided. The Landlord breached the tenancy agreement by blocking access to wi-fi.

I accept the Tenant had to use internet on their phone based on the phone bills provided.

I accept the Tenant paid \$765.00 for internet on their phone based on the phone bills provided and because H.B. did not dispute the amount sought.

I award the Tenant **\$765.00**.

**#2 Air mattress \$99.98**

I do not find the Tenant is entitled to compensation for the damaged air mattress because the Tenant has not provided convincing evidence that the air mattress was damaged by the Landlord's son smashing the window of the rental unit. The Tenant provided photos of the air mattress but the photos do not show the smashed window or glass on the air mattress. The Tenant has failed to link the damaged air mattress to the smashed window.

This claim is dismissed without leave to re-apply.

**#3 Distilled water bottles \$39.27**

**#4 Distilled water bottles (lost receipts) \$80.00**

Section 32 of the *Act* required the Landlord to maintain the rental unit in a manner that complied with health, safety and housing standards and made it suitable for occupation.

I accept the Landlord turned the water for the rental unit off around November 28, 2022, based on the video provided by the Tenant. I accept the video shows the water had been off for at least a few days. The video shows empty water bottles in the bathtub from the Tenant having to use water bottles to bathe.

H.B. said the water was turned off because the Tenant flooded the rental unit. However, at the prior hearing, the Landlord said the Tenant flooded the unit in January and February of 2023, which does not explain or justify the Landlord turning the water off in November of 2022. I also note that the Landlord did not provide any evidence of the Tenant flooding the rental unit for this hearing.

The Landlord breached section 32 of the *Act* by shutting the water to the rental unit off in November of 2022.

I accept the Tenant had to buy water to use in the rental unit based on the video provided.

I accept that the Tenant spent \$119.27 on water because a receipt in evidence and the video supports this.

I award the Tenant **\$119.27**.

**#5 Security deposit \$450.00**

Under sections 38(1) and 39 of the *Act*, the Tenant must provide their forwarding address to the Landlord in writing before they can ask for return of their security deposit. The Tenant had not provided their forwarding address to the Landlord at the time of the hearing. This claim is dismissed with leave to re-apply. The Tenant must provide their forwarding address to the Landlord in writing if they want their security deposit back. If the Tenant provides their forwarding address and the Landlord does not comply with section 38(1) of the *Act*, the Tenant can re-apply for return of the security deposit.

**#6 10 days in March \$300.00**

This was a month-to-month tenancy. I understand there were issues between the parties and that the Tenant felt they had to move out of the rental unit. However, the Tenant had to comply with the *Act* and the relevant sections state:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Tenant gave the Landlord notice March 22, 2023, and moved out the same day. The Tenant's notice did not comply with section 45(1) of the *Act*.

Section 45(3) of the *Act* did not apply. RTB Policy Guideline 8 addresses ending a tenancy for breach of a material term and states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:



- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I do not find that the Tenant provided a breach letter as outlined above. I do not accept that the Tenant was allowed to end the tenancy on the same day they provided notice to the Landlord based on section 45(3) of the *Act* because I do not find that the Tenant provided a reasonable timeline for the Landlord to fix the issues noted in the Tenant's notice.

Given the Tenant did not comply with sections 45(1) and (3) of the *Act* in ending the tenancy, I am not satisfied the Tenant is entitled to return of rent paid for the nine days of March they no longer lived in the rental unit.

This claim is dismissed without leave to re-apply.

**#7 Nonpecuniary damages \$300.00**

I have accepted that the Landlord turned the water to the rental unit off in November of 2022 and breached section 32 of the *Act*. Having water in a rental unit is a fundamental requirement. I accept the Tenant's position that the damage and loss caused by not having water in the rental unit for a period goes beyond simply the cost of purchasing water to use in the rental unit. I accept that the Tenant is entitled to \$300.00 for loss of use of water in the rental unit for a period due to the extreme inconvenience and loss of use of a fundamental aspect of a rental unit this caused.

I award the Tenant **\$300.00**.

**Summary**

The Tenant is entitled to:

Item	Description	Amount
1	Internet utility	\$765.00
2	Air mattress	-
3	Distilled water bottles	\$39.27
4	Distilled water bottles (lost receipts)	\$80.00
5	Security deposit	-
6	10 days in March	-
7	Nonpecuniary damages	\$300.00
	<b>TOTAL</b>	<b>\$1,184.27</b>

I issue the Tenant a Monetary Order for **\$1,184.27** under section 67 of the *Act*.

**Conclusion**

I issue the Tenant a Monetary Order for **\$1,184.27** under section 67 of the *Act*. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court 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: April 27, 2023

---

 Residential Tenancy Branch