



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL, MNDCL, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 2, 2023, in which the Landlord requested monetary compensation in the amount of \$35,099.00 from the Tenant including recovering the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on March 21, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant called in on his own behalf. The Landlord's daughter, G.N.S. called in on behalf of the Landlord.

The parties were cautioned that private 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

The Landlord's agent testified as follows. She stated that the Tenant was already in occupation when the Landlord purchased the property in 2018. Pursuant to the tenancy agreement, rent was payable in the amount of \$5,900.00 for 6 bedrooms.

The Landlord's agent testified that the Landlord discovered the Tenant had moved out at some point in time in 2019. She stated that although he moved out, she did not make an application to end the tenancy as the Tenant was still paying his rent. She claimed that she did not understand the tenancy laws and didn't know what to do until she got some advice from friends.

#### *Compensation for Basement Flooding*

In terms of the first portion of her claim the Landlord sought \$2,968.00 in compensation for the cost to repair the unit after it flooded in 2021. She claimed this was a result of a plugged filter in the basement skylight on a sunken patio. The Landlord's agent argued that pursuant to the additional terms of the tenancy agreement/the contract the Tenant agreed to care for the gardens, which the Landlord submits includes clearing this filter. When he failed to do so the basement flooded. In support the Landlord provided copies of receipts for the amounts paid to remediate the damage.

#### *Compensation for Rent collected by Tenant in Excess of Rent Paid to Landlord*

The Landlord also claimed compensation related to the Tenant renting out the house to others. The Agent stated that the Tenant rented the entire house out to others for \$6,860.00 per month, yet he only paid \$5,900.00 per month to the Landlord. The Landlord claimed the Tenant received \$56,640.00 more than he paid in rent, and she sought compensation equivalent to his profit. At the hearing the Landlord's agent confirmed the Landlord sought only \$32,031.00 as she was aware of the monetary limit of the Residential Tenancy Branch and did not want to pursue the balance in the B.C. Supreme Court.

The agent confirmed that the Landlord only realized the Tenant was making a profit in 2020. Before that she didn't realize he was profiting. She didn't end the tenancy at the time as she was afraid others would not pay their rent on time and he paid on time.

In response to the Landlord's claim, the Tenant stated as follows.

In terms of the flooding, the Tenant stated that the issue was already decided. He noted that the parties attended another arbitration on June 27, 2022. By Decision dated June 28, 2022, the arbitrator found that the Tenant was not responsible for the flooding. (The file number for that matter is included on the unpublished cover page of this my Decision.) The relevant portion of the Decision is as follows:

The tenant testified that the yard was maintained, the landlord asserted the opposite. No documentary evidence to support the landlord's position was accepted for consideration. I find that the landlord has not proved on a balance of probabilities that the flood occurred due to the failure of the tenant and or subtenants to maintain the yard.

In terms of the Landlord's claim for compensation for the profit received by the Tenant, the Tenant asserted that he had the Landlord's permission. He noted that on March 25, 2020 the Tenant informed the Landlord that he was moving out but would continue to rent out the property. In support he provided a copy of email communication he sent to the Landlord in this respect. He also attached her response which confirmed the Landlord agreed to this. He further testified that they renegotiated the lease in the beginning of 2022 and increased the rent by more than 10% and in the addendum the Landlord confirmed her agreement to the Tenant renting the property out.

### 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.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I find the Landlord's claim for compensation for the cost to remediate the basement must fail. The issue of the Tenant's responsibility for this has already been determined by Decision dated June 27, 2022 wherein Arbitrator Mooney found the Tenant was not responsible.

Section 77(3) of the *Residential Tenancy Act* (the "*Act*") provides that, except as otherwise provided, a Decision is final and binding.

Further, the legal principle of *Res judicata* ("the matter is judged") prevents a party from pursuing a claim that has already been decided. *Res Judicata* is an equitable principle

that, when its criteria are met, precludes relitigation of a matter. There are a number of preconditions that must be met before this principle will operate:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision (or their privies) are the same in both the proceedings.

All three of the above preconditions apply in the case before me. The question of the Tenant's responsibility for the flooding was already decided by Arbitrator Mooney and her decision was final. Further, the claim before me relates to the same parties as in the matter before Arbitrator Mooney. In that case, Arbitrator Mooney already considered whether the Tenant's actions or inaction in terms of maintaining the yard contributed to the flood and decided that the Landlord failed to prove it was his fault. That decision was final and binding and there is no jurisdiction under the *Act* that allows my reconsideration of this issue.

I similarly find the Landlord's claim for compensation equivalent to the profit the Tenant derived from renting the rental unit must also fail. There is no evidence to support a finding that the Landlord suffered a loss. The Tenant paid his rent as set out in the residential tenancy agreement.

Further, there is no evidence to support a finding that the Tenant breached the *Act* or the tenancy agreement. The evidence confirms the Landlord gave the Tenant consent to rent the rooms. The Landlord's agent also testified that the Landlord did not end his tenancy as he paid his rent on time and she feared others would not. The Tenant assumed the risk of collecting rent from others and the Landlord benefitted from his efforts. While she may now wish she received more of the profit, he honoured his contractual obligation to pay rent and she is not entitled to further sums.

### Conclusion

The Landlord's claim is dismissed in its entirety.

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: April 14, 2023