



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, DRI, RR, RP, PSF, OLC, FFT

### Introduction

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

- a monetary order of \$100.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order regarding a disputed additional rent increase of \$17.00, pursuant to section 43;
- an order allowing the tenant to reduce rent of \$100.00 total, for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 32;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 22 minutes from 9:30 a.m. to 9:52 a.m.

Both parties confirmed their names and spelling. The landlord's agent provided her email address, and the tenant provided her mailing address for me to send copies of this decision to both parties after this hearing.

The landlord's agent confirmed that she is the manager for the landlord company ("landlord") named in this application. She stated that she had permission to represent the landlord at this hearing. She said that the landlord owns the rental unit. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, both parties separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle this application. Both parties were given multiple opportunities to settle this application at the beginning and end of this hearing, and declined to do so.

I cautioned the tenant that if I dismissed her entire application without leave to reapply, she would not receive any orders against the landlord and she would receive \$0. She affirmed that she was prepared for the above consequences if that was my decision.

I cautioned the landlord's agent that if I granted the tenant's entire application, the landlord would be required to abide by orders and pay the tenant \$317.00 total, including the \$100.00 application filing fee. She affirmed that the landlord was prepared for the above consequences if that was my decision.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include the legal name of the landlord. Both parties consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

#### Preliminary Issue – Severing the Tenant's Monetary Claims

The following RTB *Rules* are applicable and state (my emphasis added):

##### *2.3 Related issues*

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

##### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rules 2.3 and 6.2 of the RTB *Rules of Procedure* allow me to sever issues that are not related to the tenant's main, urgent, priority application. The tenant applied for 7 different claims in this application. I dealt with 4 of the tenant's 7 claims at this hearing.

I informed both parties that the tenant was provided with a priority hearing date, due to the urgent nature of her application for an order to comply, an order for repairs, and an order for services and facilities. I notified them that these are the central and most important, urgent issues to be dealt with at this hearing. They affirmed their understanding of same.

I notified both parties that the tenant's monetary claims were dismissed with leave to reapply, as they are non-urgent lower priority issues, and they can be severed at a

hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. They affirmed their understanding of same.

The tenant's remaining 3 claims, for a monetary order of \$100.00 for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, an order regarding a disputed additional rent increase of \$17.00, and an order allowing the tenant to reduce rent of \$100.00 total, for repairs, services, or facilities agreed upon but not provided, is severed and dismissed with leave to reapply. The tenant is at liberty to file a new RTB application and pay a new filing fee, if she wants to pursue these claims in the future.

### Issues to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order allowing her to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2015. Both parties signed a written tenancy agreement. Monthly rent in the current amount of \$878.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit in full. The tenant continues to occupy the rental unit.

The tenant testified regarding the following facts. There are ants crawling all over the kitchen counter where she prepares food. She wants the landlord to get rid of them. She missed two holidays, Christmas and Easter, because of the ants. She is tall, so when she brushes her teeth, she can see ants crawling all over the sink taps and it is

“gross and disgusting.” The landlord provided 9 notices to enter, and no one showed up 1 time. The landlord’s treatments are not working, and the ants are still there.

The landlord’s agent testified regarding the following facts. The landlord’s property management takes all tenants’ maintenance requests seriously. They try to deal with requests as soon as possible. The landlord has a monthly contract with a professional pest control company O (“PCC”) to complete treatments twice a month. When the landlord heard from the tenant, they immediately called their PCC and completed 7 inspections and treatments between December 2022 and April 2023. The tenant has refused to follow the instructions of the PCC, so it is hard to fix the problem. The landlord asked a different PCC, A, to give a second opinion regarding the ants in the tenant’s rental unit. The tenant was told by the PCC not to squish the ants because it prevents effective pest control. The tenant has not complied with their instructions. There is a risk of the ants spreading to other units in the same building. The tenant has to stop squishing the ants or move out.

The landlord’s agent stated the following facts. On December 8, 2022, the landlord performed an inspection of the rental unit and there were no ants found. On December 19, 2022, the landlord completed a follow up treatment and found no live ants in the kitchen. On January 24, 2023, there was a second inspection and treatment and there were minimal ants found. On January 27, 2023, there was no sign of live ants, and the tenant was told not to squish the ants. On February 7, 2023, there was a follow-up to the treatment and the tenant was noted to have not followed the instructions of the PCC. On February 17, 2023, the PCC noted that they their instructions were not followed by the tenant. On April 3, 2023, there were 5 ants found and it was treated, and the tenant refused to comply with the instructions of the PCC. The tenant is re-infesting the rental unit. The ants can mutate. The PCC invoices were paid by the landlord and were provided as evidence for this hearing. The landlord completed 7 treatments. The tenant has failed to comply. The tenant was given multiple caution notices by the landlord. The landlord completed the last treatment on May 2, 2023, but there has been no report received by the landlord from the PCC yet.

The tenant stated the following in response. She has followed the instructions of the landlord’s PCC to not squish the ants. The ants were in the rental unit before any complaints by the tenant. The tenant cannot afford to move out and does not intend to do so.

## Analysis

### Rules and Burden of Proof

At the outset of this hearing, I informed the tenant that, as the applicant, she had the burden of proof, on a balance of probabilities, to prove her application and evidence. The tenant affirmed her understanding of same.

The tenant was provided with an application package from the RTB, including a four-page document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”), when she filed this application.

The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2 (my emphasis added):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- **It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).**
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days after this hearing to issue a written decision. They affirmed their understanding of same.

The tenant received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support her application, and links to the RTB website. It is up to the tenant to be aware

of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenant to provide sufficient evidence of her claims, since she chose to file this application on her own accord.

The following *RTB Rules* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenant did not properly present her application and evidence, as required by Rule 7.4 of the *RTB Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules*.

During this hearing, the tenant failed to sufficiently present and explain her claims and evidence submitted in support of her application. The tenant mentioned submitting documents but did not review them in sufficient detail during this hearing.

This hearing lasted 22 minutes, so the tenant had ample opportunity to present her application and respond to the landlord's evidence. I repeatedly asked the tenant if she had any other information or evidence to present, during this hearing.

*Findings*

Section 32 of the *Act* states the following:

*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.*
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) A tenant is not required to make repairs for reasonable wear and tear.*
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

Residential Tenancy Policy Guideline 1 states the following, in part, at page 1:

*The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).*

*Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.*



On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for an order requiring the landlord to provide services or facilities required by law, and an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, without leave to reapply. The tenant stated that both of the above orders relate to her request for the landlord to complete repairs and pest control treatments for ants at her rental unit.

I find that the tenant failed to provide sufficient testimonial evidence at this hearing, of when she notified the landlord about the ant problem, when she requested pest control, how much time she provided the landlord to complete pest control, or other such information. I find that the tenant failed to reference or explain any documentary evidence she submitted, to support her application, during this hearing.

I find that the landlord has provided pest control inspections and treatments for the ant problem at the tenant's rental unit. I find that the landlord complied with its obligation, pursuant to section 32 of the *Act*, to provide and maintain the rental unit 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 the tenant.

I find that the landlord, at their own cost, hired licensed pest control professionals to complete inspections and treatments of the ant problem at the tenant's rental unit, from December 2022 to May 2023 (including two days prior to this hearing on May 4, 2023). The landlord provided reports and invoices to confirm that they ordered and paid for same, and the landlord's agent referenced and explained the above documents during this hearing. The tenant did not dispute the above information, nor did she dispute or question the authenticity or contents of the landlord's documents, during this hearing.

I find that the rental unit is still suitable for occupation by the tenant, even if there is an ant problem. The tenant stated that that she had no intention of moving out of the rental unit and she wanted to continue to occupy it.

The landlord has not provided evidence of the findings of the most recent ant inspection and treatment at the tenant's rental unit on May 2, 2023. The tenant testified that the ants are still present at her rental unit.

I order both parties to comply with section 29 of the *Act*, which requires the landlord to provide proper notice to the tenant, prior to entering the rental unit, and requires the

tenant to provide access to the rental unit, after proper notice from the landlord, prior to any pest control inspections and treatments by the landlord's PCC.

I order the landlord to pay for licensed, certified pest control professionals to continue pest control inspections and treatments to get rid of the ants at the tenant's rental unit. I order the tenant to comply with the instructions and recommendations of the landlord's pest control professionals. If the tenant fails to comply, she may be required to pay for the costs of future inspections and treatments by the landlord's pest control professionals.

As the tenant was mainly unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants' application for a monetary order of \$100.00 for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, an order regarding a disputed additional rent increase of \$17.00, and an order allowing the tenant to reduce rent of \$100.00 total, for repairs, services, or facilities agreed upon but not provided, is severed and dismissed with leave to reapply.

I order both parties to comply with the *Act* and the above orders regarding ant pest control inspections and treatments at the rental unit.

The remainder of the tenant's application is dismissed without leave to reapply.

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: May 04, 2023

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Residential Tenancy Branch