



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding TML MANAGEMENT GROUP  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDCT, RP, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the first date scheduled, and was adjourned to continue. My Interim Decision was provided to the parties after the first scheduled date.

The tenant and an agent for the landlord attended the hearing on both scheduled dates and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

During the course of the hearing, the parties agreed that the tenant has given notice to the landlord to vacate the rental unit, and the parties agreed that the tenancy will end on March 31, 2024 at 1:00 p.m. and the landlord will have an order of possession effective at that time and date.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord make repairs to the rental unit or property, and the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Both parties have provided evidentiary material, however some of the tenant's evidence was not provided within the time required by the Rules of Procedure. At the commencement of the first day of the hearing, I learned that none of the tenant's late evidence was provided to the landlord, but the parties agreed that all other evidence had been exchanged. Any evidence that a party wishes to rely on must be provided to the other party, even if they already have a copy, because it is important for both parties to know what is before me. Since the tenant's late evidence has not been provided to the landlord, I decline to consider it. All other evidence has been reviewed and the evidence I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

The issue remaining to be decided is: has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for damage to a chandelier, hydro and food costs?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on November 1, 2019 and reverted to a month-to-month tenancy after October 31, 2020, and the tenant still resides in the rental unit. Rent in the amount of \$3,200.00 was originally payable on the 1<sup>st</sup> day of each month, which has been increased to \$3,312.00 during the tenancy. The tenant has also provided a copy of a Notice of Rent Increase dated November 23, 2023 increasing the rent by \$115.00, from \$3,312.00 per month to \$3,427.00 per month effective March 1, 2024. On September 25, 2019 the tenant paid a security deposit to the landlord in the amount of \$1,600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided by the landlord for this hearing.

A flood was caused by a neighbour who was not a tenant of the landlord. Previous hearings have resulted in Decisions, copies of which have been provided for this hearing.

The tenant further testified that the tenant's grandmother saved money and went to Italy where she purchased a chandelier. The tenant has had the chandelier for 42 years, which is an heirloom, and the tenant has always had it with her. The landlord was supposed to move all furniture, and was ordered to get the job done within 14 days, but it took 5 months. The tenant's insurance took care of water damage to the tenant's personal items except for the items the landlord was supposed to move.

On February 1, 2024 workers from a packing company hired by the landlord were packing furniture to move it in order to repair the floor. They kept getting tangled in the tenant's chandelier and broke some crystals. It was hanging low, and on January 26, 2024 the tenant suggested to the landlord's agent that it should be moved. However, the landlord's agent replied that the movers know what they're doing. The landlord's agent told the tenant that the moving company should pay for it, but the tenant cannot talk to them because they were hired by the landlord. The light fixture was there for 4 ½ years, and the tenant would have replaced the original fixture once moving out.

The tenant has provided a copy of a quote of \$550.00, plus GST, and was told that it could cost around \$1,500.00 or possibly more to repair the chandelier and replace the broken crystals. The tenant claims \$1,500.00, which includes the \$550.00 quote, which was for cleaning only. The tenant has provided photographs and a copy of the quote for this hearing.

Numerous emails and photographs have been provided for this hearing.

During demolition and remediation of the rental unit, the tenant had nothing to cook in or on. The tenant had to eat out, and tried to keep it within \$50.00 per person for herself and her 23 year old daughter who both lived in the rental unit. The tenant did not keep receipts because most was paid for online. The tenant kept a journal of meals, which has been provided for this hearing. The tenant's printer is in a box somewhere.

The landlord's agent said that the cabinets would be moved, and the movers took it upon themselves and put all of the tenant's pots in a box. Furniture was supposed to be returned a week earlier than it was, and the tenant stopped the journal. The tenant notified the landlord that furniture could be returned on February 14 or 15, but the tenant was having surgery on the 16<sup>th</sup>. However, the furniture didn't arrive until February 23, 2024, and the tenants are still living with floor to ceiling boxes. The tenant's journal shows \$1,773.90 for meals to the 17<sup>th</sup> of February, 2024, and the tenant claims that amount, plus an additional \$700.00 for the 6 ½ days extra.

Renovations were completed on February 13, 2024. The tenant was available for that week to move back into the rental unit, but the landlord's agent chose the only date that the tenant wasn't available due to a scheduled surgery on February 16, 2024.

The restoration workers used the lights, fans and saws, for which the tenant claims \$100.00 for hydro that the tenant pays for.

The tenant's insurance paid for flood damaged furniture, but told the tenant that the landlord's insurance and the person who caused the flood should take care of the

balance of the tenant's claim, and that the landlord should have moved the tenants into a hotel and pay for meals. If the tenant put in a claim when it was not caused by the tenant, the tenant's insurance premiums would increase. It was not the tenant's fault, and all furniture was in the middle of the floor. The insurance company paid for the furniture, and said it was not the tenant's responsibility to move furniture, and the tenant would be a fool to make that claim. The tenant was also advised that it is not the tenant's property and the tenant should not interfere with the owners.

A previous order of the Residential Tenancy Branch ordered that rent be reduced until repairs were completed, which was on February 23, 2024 when furniture was returned by the landlord's moving company, and rent was paid.

The Notices were issued on September 3, 2023 so the landlord wouldn't have to do the repairs.

**The landlord's agent** is the property manager for rental and sale of the property, and testified that on February 2, 2024 the tenant deposited rent into the landlord's trust account. Usually, they would send a deposit slip, but the bank stopped payment so the landlord served a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities. The tenant still owes \$160.09 for February 22, 2024 to February 28, 2024, as well as \$3,427.00 for March, 2024. There was an order that rent would be reduced by \$662.40 until renovations were complete. The landlord also charged a \$25.00 fee for late payment of rent, which is included in the tenancy agreement.

Renovations were complete and all furniture moved back on February 22, 2024, and rent was increased from \$3,312.00 to \$3,427.00 effective March 1, 2024. The landlord was ordered to get professional movers to move all furniture, which the landlord did. The landlord's agent instructed the movers to not remove the chandelier because it wasn't affecting the work.

The landlord asked movers not to move anything from the kitchen, and they only worked there for about 2 hours, not the entire restoration period, so the tenant could still have used the kitchen. The tenant must have requested the movers to do that. The landlord has provided a copy of a string of emails between the landlord's property management company to the moving company dated January 29, 2024 stating that the kitchen did not need to be packed and that the renovations do not involve removing the kitchen cabinets, which was also noted to the tenant. The string also contains a response from the tenant, arguing that the kitchen would also have to be packed up, referring to documents provided by the landlord's agent stating that the kitchen cabinetry has to be removed making the entire bottom floor a demolition site and unliveable.

The restoration company was only doing the bottom part of the cabinets, which took 2 hours, and nothing had to be done in the kitchen. The tenant must have requested the movers to do that, and the restoration company didn't say anything about moving appliances. The landlord has provided a string of emails, the first from the tenant dated January 27, 2024 to the moving company, which was copied to the landlord, stating that the kitchen would have to be packed up, according to documents the tenant received from the landlord's agent. The landlord's agent replied to the tenant and to the moving company that the kitchen did not need to be packed.

The tenant had sent an email to the landlord's agent about damage to the tenant's chandelier, but didn't observe it.

The rental unit has sold, and the landlord's agent called the moving company mentioned by the tenant, but the landlord thought it should be the new owner's problem, and the owner's insurance won't cover that.

#### SUBMISSIONS OF THE TENANT:

The tenant's furniture was returned on the 23rd of February, and that's when the landlord sent an email saying it was done. Due to a misconception with dates that the landlord's agent gave to the tenant, the tenant is entitled to 1 month of free rent because on February 29, 2024 the landlord served a Two Month Notice to End Tenancy For Landlord's Use of Property. The tenant disputed it and the hearing is scheduled for March 21, 2024, but it wasn't sold. The tenants have done nothing wrong, and to be evicted because of damage caused by a neighbour is not fair. The tenant asks that a monetary order be made against the company and the landlord's agent, who is the one the tenant writes cheques to. The tenant asked previously that the landlord move the tenants to a hotel because the dust and noise were so unbearable.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

Rent was paid to the company Trust Account; the landlord's agent is not the owner. The living room and another room on the ground floor were affected by the flood. The premises were livable so the restoration company did not ask the tenants to move out. With respect to the sale of the rental unit, subject removal considers the property as sold. The completion date is time for the transaction from the old owner to the new owner. The Two Month Notice to End Tenancy For Landlord's Use of Property is given to a tenant if the new owner wants to move in. Subjects were removed on December 21, 2023 and deposit paid. After that, the Notice was served, on December 23, 2023. The effective date of vacancy is February 29, 2024.

## Analysis

Firstly, I find that the tenant's request for repairs is for repair to the tenant's chandelier, for which the tenant claims monetary compensation from the landlord.

I have reviewed the evidence, with the exception of late evidence provided by the tenant. The previous Decisions are dated November 24, 2023 and February 7, 2024. In the first case, heard on October 27, 2023 the tenant had applied for:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for the cost of emergency repairs;
- monetary compensation from the landlord for loss of use of the rental unit;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- an order limiting or setting conditions on the landlord's right to enter the rental unit.

The Decision states that the notice to end the tenancy was already cancelled by the parties.

The application for a monetary order for the cost of emergency repairs was dismissed without leave to reapply.

With respect to the tenant's claim for monetary compensation under the *Act*, regulation or tenancy agreement, the Decision states that the tenant had claimed a combined sum of \$5,000.00 for flood related losses "... in relation to the damaged floors, the aura of mold from the water damage, the inability for the tenant use their home office, kitchen, and dishwasher during the remediation process, the loss of air quality within the rental unit resulting from both the mold and the operation of the dehumidifiers, and the increased electricity costs associated with the operation of the remedial appliances during the repairs." The tenant was granted monetary compensation in the amount of \$1,806.00 for the value of loss during the tenancy, which included nominal damages of 20% of rent for September and October, 2023 for the "general loss of value of the tenancy," and \$150.00 for increased electricity costs.

Further, rent was reduced by 20% until the floors were replaced and water damage remediated. The landlord was also ordered to make repairs, and have an assessment completed within 14 days of the date of the Decision.

The applications for an order that the landlord provide services or facilities and for an order limiting or setting conditions on the landlord's right to enter the rental unit were dismissed without leave to reapply.

In the second case, the hearing was held on February 6, 2024 which also refers to the previous hearing. The tenant had applied for:

- monetary compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the law or the tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order allowing the tenant to change the locks to the rental unit;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord.

The Decision states that the following applications were dismissed with leave to reapply:

- the application for an order that the landlord make repairs to the rental unit or property;
- the application for an order that the landlord provide services or facilities required by the law or the tenancy agreement;
- the application for an order suspending or setting conditions on the landlord's right to enter the rental unit;
- the application for an order allowing the tenant to change the locks to the rental unit; and
- the application for an order that the landlord comply with the *Act*, regulation or the tenancy agreement.

That left 2 applications: monetary compensation and reduction in rent.

The Decision also states that the tenant had testified that the first Arbitrator “didn’t have access to the full floor plan of the rental unit and therefore the amount of compensation should be higher.” However, the Arbitrator found that *res judicata* applied, and the matter had already been dealt with in the November 24, 2023 Decision.

The monetary claim heard on February 6, 2024 was for \$7,000.00 for loss of work, and that monetary application was dismissed without leave to reapply, along with the application for an order reducing rent.

This application for monetary compensation refers to loss of use of the rental unit for the month of February, 2024 in the amount of \$2,649.60, which was amended to a new amount of \$3,748.90, and the tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$1,500.00 for chandelier repair/replacement;
- \$375.00 for an electrician to remove the fixture;
- \$100.00 for Landlord Use of power; and
- \$1,773.90 for food cost during renovations for 2 people.

The tenant was previously granted monetary compensation in the amount of \$ \$150.00 for increased electricity costs.

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party’s failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

A landlord is required by law to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, which I find includes damages for flooding caused by a neighbour.

With respect to the \$1,500.00 claim for the chandelier, the amount includes the \$550.00 estimate for cleaning. The tenant testified that the chandelier hung in the rental unit for 4 years prior to the flooding event. I am not satisfied that the chandelier didn’t already



need cleaning, and the tenant has failed to establish that the cleaning is a result of the landlord's failure to comply with the *Act* or the tenancy agreement. The balance of the claim is for an estimate for repairs, however there is no evidence to support the testimony that a verbal estimate was given to the tenant. Therefore, I find that the tenant has failed to satisfy element 3 in the test for damages. The tenant's \$1,500.00 claim for the chandelier is dismissed without leave to reapply.

With respect to the tenant's claim of \$375.00 for the electrician cost to remove the chandelier, I find that the tenant has failed to establish that the landlord failed to comply with the *Act* or the tenancy agreement, and that it was installed by the tenant. Therefore, I dismiss that portion of the tenant's claim.

With respect to the \$100.00 claim for hydro costs, that matter was dealt with in the first Decision made in November, 2023. The tenant was granted monetary compensation in the amount of \$1,806.00 for the value of loss during the tenancy, which included nominal damages of 20% of rent for September and October, 2023 for the "general loss of value of the tenancy," and \$150.00 for increased electricity costs. The flooding occurred on September 4, 2023 and the award for electricity was made after the October, 2023 hearing. I accept that the tenant was not able to fully occupy the rental unit until February 23, 2024, however I also accept that the remediation required using hydro beyond the date of the first hearing, and I grant a nominal award of **\$100.00** for further hydro costs.

With respect to the \$1,773.90 claim for the cost of food, the landlord's agent testified that the tenant must have contacted the moving company to have them remove the kitchen items, not the landlord. Considering the strings of emails provided for this hearing, it appears that the tenant made that call on January 27, 2024, to which the landlord replied that the kitchen cabinets would not be removed so the kitchen did not need to be packed. However, considering the other evidence showing that the dust and mold contamination, I find that the renovations made the rental unit unusable, including the kitchen. The tenant's journal of meal costs run from February 1, 2024 to February 14, 2024 and an additional \$300.00 for February 15 to 17, 2024. Although there was a booking issue for moving the tenant's items back into the rental unit, the tenant has provided an email dated February 15, 2024 from the landlord scheduling the furniture return for February 22, 2024. I accept the journal, and I find that the tenant has established a claim for meals in the amount of **\$1,773.90**.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, and if the notice refers to unpaid rent, I must make a monetary order in favour

of the landlord for the unpaid rent. In this case, I have not dismissed the tenant's application to cancel the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, but the parties have settled that portion. Therefore, I decline to make any orders or findings with respect to any amount of unpaid rent.

Since the tenant has been partially successful with the application, the tenant is also entitled to recover the **\$100.00** filing fee from the landlord.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$1,973.90. The landlord must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, the tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

By consent, I hereby grant an order of possession in favour of the landlord effective at 1:00 p.m. on March 31, 2024 and the tenancy will end at that time.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,973.90**.

This order is final and binding and may be enforced.

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: March 17, 2024

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Residential Tenancy Branch