



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KIDD HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, RP

### Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution, filed February 15, 2018, wherein the Tenant sought an Order for repairs, emergency and otherwise, as well as monetary compensation from the Landlord for lack of use of the rental unit for a period of four months in which the Tenant alleges the water was frozen in the rental unit and he was not permitted to use the rental unit.

The hearing was conducted by teleconference on March 22, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

### Preliminary Matter

At the conclusion of the hearing the Tenant's advocate stated that the Tenant did not receive the Landlord's evidence package. The Landlord's assistant, A.C., testified that she served the Landlord's evidence in an envelope on the Tenant by posting it to the rental unit door on March 8, 2018. She further confirmed that he was living in the rental unit and right after she taped it to his door she saw him come and grab the package. She also stated that he has a sign on his door that says "no knocking". She confirmed that M.K. was with her and witnessed her taping it to the door.

Notably, the Tenant did not dispute A.C.'s testimony in this regard.

I accept A.C.'s evidence that she served the Landlord's evidence on the Tenant. I found her to be forthright and honest in her responses. I therefore considered the evidence when making my Decision.

No other 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 respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

At the outset of the hearing the Tenant's advocate confirmed that the water pipes no longer freeze as the weather has improved. Further, the advocate confirmed that the Tenant is moving from the rental unit on March 31, 2018 such that the issues relating to repair of the rental unit are no longer relevant.

### Issue to be Decided

1. Is the tenant entitled to monetary compensation from the Landlord?

### Background and Evidence

In support of his claim the Tenant testified as follows. He confirmed that he moved into the rental unit, which is a self-contained one bedroom cabin, on February 1, 2017.

The circumstances giving rise to the Tenant's application relate to his allegation that the water lines froze such that the rental unit was uninhabitable. He sought return of four months' rent as well as his increased electrical charges for a total claim of \$3,326.01.

Tenant stated that the first time the water lines froze was November 3, 2017. He stated that he could not shower, wash dishes or use the toilet. The Tenant stated that he asked his mother to contact the Landlord as he does not have any contact with the Landlord, or the Landlord's son, B.K. due to a "no contact order".

The Tenant claimed that the water lines were frozen from November 3, 2017 to February 2018. He therefore sought return of the \$695.00 per month in rent that he paid during this time period. The Tenant stated that nearly every day his mother would drive to pick him and his daughter up and then drive "half way across town" to go to her

house to use her facilities. He noted that it was 45 minutes to an hour to walk one way and he does not have a vehicle.

The Tenant testified that the \$546.01 claimed represents two months of hydro. He stated that he turned up the heat as much as he could to try to thaw out the pipes.

The Tenant's mother, S.C., also testified on behalf of the Tenant. She confirmed that to her knowledge the first time the pipes froze in the rental unit was the beginning of November 2017. She further stated that as soon as she was informed by her son about the water freezing she called the Landlord's son, M.K., on his cell phone to tell him.

S.C. also claimed that she spoke to M.K. about the frozen pipes on the phone as well as with the Landlord's employees when she went in to pay the rent on December 1, 2017 and January 1, 2018.

In terms of any written requests, S.C. stated that a poverty activist wrote a letter to the Landlord on the Tenant's behalf on January 5, 2018 (a copy of which was introduced in evidence). She stated that she dropped off the letter at the Landlord's office and gave it to one of the Landlord's employees. She claimed that she videotaped dropping off the letter, although a copy of the video was not introduced in evidence. S.C. stated that this was the only letter regarding repairs.

S.C. said that as soon as it would warm up a bit the pipes would unthaw for a few days and then as soon as it got cold they would freeze again.

In response to the Tenant's claims the Landlord testified that the first time he was made aware that the water pipes were freezing was when the office was served with the Tenant's Application for Dispute Resolution on February 17, 2018. He further stated that he spoke to the Tenant's mother who confirmed that the issue had been resolved because the water had thawed out now that the temperature had increased.

The Landlord further stated that the first time he received the January 5, 2018 letter was when he received the Tenant's application package for dispute resolution.

The Landlord also testified that he did not receive a call from the Tenant or the Tenant's mother about the water until they spoke on February 17, 2018 at which time she indicated the pipes had thawed.

The Landlord provided in evidence a letter from the office manager, A.C., wherein she writes that she did not have any knowledge of this issue either.

The Landlord's son, M.K., also testified as follows. He confirmed that the first time he became aware that the water was freezing in the rental unit was February 17, 2018. M.K. stated that he did not receive any telephone calls from the Tenant or the Tenant's mother about the freezing pipes, contrary to their claims.

M.K. stated that he received a package on February 17, 2018 which contained the January 5, 2018 letter; he confirmed this was the first time he had seen the letter. He stated that he never received any written communication or telephone calls from the Tenant or his mother until he received the hearing package.

The Landlord's employee, A.C., also testified. She confirmed the contents of her letter provided in evidence by the Landlord. She stated that she has worked for the Landlord for 8 years as the store manager and account manager. She also stated that she deals with the paper work for the Landlord's rentals.

A.C. testified that she first became aware that there were issues with the pipes when he sent the dispute application in the last few weeks.

A.C. stated that the Tenant's mother brought in rent payments for the Tenant to the store in which she works. A.C. further stated that she spoke to the Tenant's mother when she dropped off the rent payments and at no time did the Tenant's mother inform her that the pipes were frozen. She also said that K.C. never called at all.

A.C. testified that she did not receive any written communication from the Tenant or his mother regarding the pipes and had not seen the January 5, 2018 letter.

A.C. also stated that she also called B.C. Hydro to obtain the average amount of electrical usage at the rental unit and was informed it was \$170.00 per month.

Although offered an opportunity to ask A.C. questions the Tenant's Advocate decline the opportunity to question her.

### Analysis

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

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [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 Tenant 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.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

- 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.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

**8 (1) Landlord's obligations:**

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

A Tenant is entitled to exclusive occupancy of a rental unit pursuant to section 28 of the *Act*; as such it is the Tenant's responsibility to inform the Landlord of any required repairs or deficiencies in the rental unit as without this knowledge the Landlord would not be informed repairs were necessary. A Landlord who is informed of required repairs and fails to attend to them, maybe in breach of the above sections.

In the case before me, I am unable to find that the Tenant informed the Landlord that the pipes were freezing prior to making his Application for Dispute Resolution. The Tenant alleged that his mother called the Landlord's son and spoke with the Landlord's

staff about this issue. The Tenant's mother similarly testified and alleged she also dropped off a letter in January written by the poverty advocate.

The Landlord, his son and the Landlord's employee, A.C., testified and all denied any such conversations occurred. They also testified that the first time the January letter was provided to them was when they received the Tenant's Application for Dispute Resolution.

I am unable, based on the evidence and testimony before me, to reconcile these discrepancies. The Tenant bears the burden of proving his claim on a balance of probabilities, and without corroborating evidence I am unable to prefer his evidence and testimony over that of the Landlord's. I find it unlikely that the pipes were frozen from November 7, 2017 to February 2018 as alleged by the Tenant. Had that been the case, I expect the Tenant and his mother would have communicated immediately, and urgently with the Landlord. If phone calls were unsuccessful, one would expect the Tenant and his mother to communicate in writing, such as by email, text, or letter to convey the urgency of the situation, particularly as the Tenant alleges he and his daughter could not even use their toilet.

Even in the event I had found that the water pipes froze in the rental unit, and more importantly, that the Tenant made the Landlord aware of this, I find the Tenant has failed to submit sufficient evidence to support a finding that he should be entitled to return of *all* rent paid. Although the Tenant initially testified that the pipes were frozen from November 7, 2017 to sometime in February 2018, I find this unlikely. Notably, the Tenant's mother testified that the pipes would freeze and thaw out as the weather changed. Further, the Tenant claimed he continued to reside in the rental unit during the relevant time period such that he derived some benefit from the rental. As such, I am unable to find that the rental unit was uninhabitable the entire time for which the Tenant claims compensation and I therefore dismiss his claim.

Further, I dismiss the Tenant's claim for compensation for increased electrical utility charges. In support of this claim, the Tenant provided a copy of a bill indicating the amount of \$546.01 was due by February 8, 2018. This bill does not indicate whether the charges are for one month, or several months. Further, the Tenant failed to provide evidence to show the normal electricity use, as compared to the increased use he alleges was necessitated due to the freezing pipes. As such, I find he has failed to prove the actual amount required to compensate for his claimed loss.

For these reasons I dismiss the Tenant's claim for \$3,326.01 in compensation from the Landlord.

Conclusion

The Tenant's claim for compensation is dismissed.

The Tenant testified that the tenancy would end by March 31, 2018 such that his claims for repairs, emergency and otherwise, are no longer applicable; they are therefore similarly dismissed.

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 18, 2018

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Residential Tenancy Branch