

## **DECISION**

Dispute Codes      CNL MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a 2 Month Notice to End Tenancy for the Landlord's use of property and a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was conducted via registered mail and only a portion of the hearing package was sent. The Landlord confirmed receipt of copies of the Tenant's evidence, a copy of the Notice of Dispute Resolution Hearing Letter, and a copy of a different application for dispute resolution than what was filed at the Residential Tenancy Branch. The Landlord confirmed that the copy of the application she received did not show a dollar amount that the Tenant was seeking.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel the 2 Month Notice to End Tenancy under section 49(8) of the *Residential Tenancy Act*?

Is the Tenant entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

At the onset of the hearing the Tenant advised that he wished to withdraw his request to cancel the Notice to End Tenancy stating that he wishes to accept the notice as he is moving out of the rental unit at the end of the month.

The Landlord testified that she attended the hearing to request that the notice to end tenancy be upheld and to request an Order of Possession effective February 28, 2010.

The Tenant wishes to proceed with his monetary claim of \$1,296.00, an amount equal to two month's rent for compensation for being harassed by the Landlord, being evicted for false reasons, and for the Landlord manipulating other tenants.

This tenancy was based on a verbal month to month tenancy agreement which began on June 1, 2008. The current monthly rent is \$648.00 and the Tenant paid a security deposit in the amount of \$312.50 on June 1, 2008. Rent has been paid in full up to February 28, 2010.

The Landlord rents the entire condo and then sublets space to the Tenant and other tenants. The Tenant and other tenants share a bathroom and kitchenette equipped with a hot plate and a microwave.

The Tenant argued that the Landlord pasted signs up around the rental unit on bright colour paper listing the tenant rules and implemented a laundry room schedule, which the Tenant found to be harassing. The Tenant confirmed that he removed all of the Landlord's signs, without permission and after refusing to put them back up the Tenant submitted the signs to the Residential Tenancy Branch as evidence. The Tenant posted his own signs in place of the Landlord's.

The Tenant claims that the Landlord has issued two previous notices to end tenancy, prior to this third notice, which the Tenant states is harassment. The Tenant argues that the two previous notices were issued for false reasons and feels he should be compensated.

The Tenant then argued that the Landlord bribed the other tenant, by giving him a gift, so that the other tenant would change his witness statement in favour of the Landlord. The Tenant argues that this constitutes manipulation of the other tenant against him, for which he should be compensated.

The Landlord provided evidence in support of her claim that the Tenant continues to tape conversations in the rental unit, without the Landlord's permission, which inhibits her ability to perform her duties as a landlord and impinges on her personal rights.

The Tenant confirmed that he continues to record conversations which take place in the rental unit and that he does not have the Landlord's permission to do so.

### Analysis

Each participant submitted a voluminous amount of documentary evidence to the *Residential Tenancy Branch*, all of which has been carefully considered, along with the testimony, in making my decision.

Upon review of the 2 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. The Tenant testified that he was accepting this Notice to End Tenancy, as issued; therefore I dismiss his application to cancel the 2 Month Notice to End Tenancy issued on December 28, 2009.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Based on the aforementioned, I hereby approve the Landlord's request for an Order of Possession.

As the 2 Month Notice to End Tenancy was issued, and not disputed, the Tenant is entitled to compensation, equal to one month's rent payable under the tenancy agreement, in accordance with section 51(1) of the Act. Based on the aforementioned I hereby award the Tenant a monetary claim in the amount of \$648.00.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

With respect to the Tenant's claim of \$1,296.00 for harassment, false eviction, and the Landlord's manipulation of other tenant's, I find that both the Tenant's actions and the Landlord's actions to be equally harassing, offensive, and disruptive of each other's quiet enjoyment. Based on the aforementioned I find that the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss his application for monetary compensation of \$1,296.00, without leave to reapply.

As the Tenant has not been successful with his application I decline to award recovery of the filing fee.

The Tenant's security deposit is currently held in trust by the Landlord and is to be administered by the Landlord in accordance with section 38 of the Act.

I have included in both the Tenant's and Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage both parties to familiarize themselves with their obligations as set forth under the *Residential Tenancy Act*.

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **February 28, 2010 at 1:00 p.m.** This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$648.00**. The order must be served on the respondent and is enforceable through 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 *Residential Tenancy Act*.

Dated: February 23, 2010.

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Dispute Resolution Officer