



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      DRI, FF  
OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications from the landlord and tenant. The tenant's application is to dispute an additional rent increase and recovery of the filing fee. The landlord's application is for an order of possession for unpaid rent, a monetary order for unpaid rent, to retain all or part of the security deposit/pet damage deposit, compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is either party entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started in April 2009 with rent of \$600.00, the tenant paid a security deposit of \$300.00. On August 1, 2009 the landlord advised the tenant that the rent was being raised from \$600 to \$700 per month as the tenant now had a dog and the landlord requested a pet damage deposit of \$300. On November 8, 2010 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that when the tenant rented the suite he did not tell the landlord he had a large dog. The landlord stated that when the tenant viewed the suite he was advised that the rent was \$600.00 without pets and \$700.00 with pets and that the difference in rent was a 'rent incentive' for renters without pets.

The landlord stated that the tenant does not pick up after the dog and that the landlord has had to have the yard repeatedly cleaned up and the lawn repaired. The landlord stated that he has had to power wash the exterior house to remove pet hair. When the tenant continued to not pick up after his dog, the landlord fenced off a large portion of the back yard. The landlord's monetary claim is for \$900.00 in unpaid rent and pet damage deposit and \$2100.00 in damages for a total monetary claim of \$3000.00:

Pet Clean Up - 54 weeks @ \$25.00 per week = \$1350.00

Lawn Repair 4 times @ \$150.00 ea = \$600.00

Pressure Wash Front of House 3 times @ \$50.00 ea = \$150.00

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The tenant testified that when he rented the apartment the rent was \$600.00 and pets were OK with ½ month deposit. The tenant stated that in July he asked the landlord about getting a dog the landlord said that was fine as long as the \$300.00 pet deposit was paid. At the beginning of July when the tenant had the dog on the property, the landlord advised the tenant that the rent was now \$700.00. The tenant stated that he did not believe the rent increase to be legal but went ahead and paid the \$700.00 rent as requested by the landlord. The tenant has paid \$200.00 towards the \$300.00 pet damage deposit.

The tenant has paid \$700.00 per month or \$100.00 over and above the original \$600.00 monthly rent from August 2009 through October 2010 for a total overpayment of \$1500.00.

The tenant originally used the back yard as part of the tenancy but in August 2009 the landlord fenced off the back yard and cut off the tenant's access and use to most of the yard. The landlord has also disconnected the tenant's internet and satellite access which was part of the original tenancy.

The tenant stated in this hearing that on November 30<sup>th</sup> 2010 he gave the landlord 1 month's notice to end tenancy and will be vacating the unit by December 31, 2010.

## Analysis

Based on the documentary evidence and testimony I find that the tenant was not properly served with a notice to end tenancy for unpaid rent. Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

### Residential Tenancy Act **Section 43 Amount of rent increase**

- (1) A landlord may impose a rent increase only up to the amount
  - (a) calculated in accordance with the regulations,
  - (b) ordered by the director on an application under subsection (3), or
  - (c) agreed to by the tenant in writing.
- (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4) [Repealed 2006-35-66.]

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(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Based on the documentary evidence and testimony I find that the landlord did not serve the tenant a notice to increase the rent in accordance with the Act, therefore the tenants rent remains at \$600.00 per month. The landlord is to follow the provisions of the Act for any future rent increases and provide the tenant with proper 3 months notice on the approved form.

The tenant may deduct the \$1500.00 increase that has been paid and apply it to the pet deposit and future rent. To date the tenant has deducted \$100.00 for the pet deposit which is now paid in full, November \$600.00 rent and December \$600.00 rent for a total of \$1300.00. Upon vacancy of the rental unit the overpayment balance owed the tenant by the landlord will be \$200.00 and the tenant is here by awarded a monetary claim for \$200.00.

Residential Tenancy Act **Section 32 Landlord and tenant obligations to repair and maintain**

(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.

Based on the documentary evidence and testimony I find that the tenant did not maintain the yard space in accordance with the act specifically in regards to health, cleanliness and sanitary standards. I order that the tenant maintain the yard to an acceptable standard and pick up after his dog in a much more timely fashion.

Based on the documentary evidence and testimony of the landlord IE: hand written receipt of clean up costs; I find the landlord has not met the burden of proof regarding the monetary claim and this portion of the landlord's claim is dismissed.

Residential Tenancy Act **Section 27 Terminating or restricting services or facilities**

- (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Based on the documentary evidence and testimony I find that the landlord has restricted a service or facility, namely the back yard that is essential to the tenant's use of the rental unit and the internet/satellite access. The landlord is ordered to remove the fencing that has been installed and provide the tenant with the same un-restricted access to the back yard that the tenant had at the beginning of the tenancy. In regards to the internet/satellite access, the landlord agreed in this hearing to reconnect both services today.

Neither party is entitled to recovery of the \$50.00 filing fee.

## Conclusion

The notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

A monetary order in the amount of **\$200.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: December 3, 2010

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Dispute Resolution Officer