



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant for a monetary order for compensation for damages and losses and recovery of the filing fee for the cost of this Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary Matter(s)

The Landlord’s agent attended the hearing and testified that her father, WMF, is the owner of the property. The Landlord’s agent stated that WMF shares a joint bank account with her into which she deposits the rent payments, and WMF pays the bills and costs associated with the rental unit out of this account. The Landlord’s agent stated that she has informed the Landlord about the Tenant’s application and the hearing so that he is aware of the issues and the proceeding. WMF did not attend the hearing. The Tenant provided into evidence a copy of the BC Assessment search of the titled owner of the property, which shows that WMF is an owner of the rental property. I find that it is appropriate and reasonable to amend the Landlord’s name on the Application to include WMF.

The Landlord’s agent and the Tenant also confirmed that there was an error on the Application with regards to the rental unit address which is also the address for the Landlord’s agent. The Landlord’s agent confirmed receipt of the Application, Notice and evidence from the Tenant. The parties requested that the address for the Landlord’s agent and rental unit be corrected. I have granted the parties request as it is reasonable to do so.

The Act allows a Landlord to be served through the address of their agent, as a result I find that the Landlord has been duly served with the Application and Notice of this Hearing.

The parties raised the issue of jurisdiction at the hearing as the Landlord's agent occupied the rental unit with the Tenant and they shared a kitchen. Section 4 of the Act states that the Act does not apply to a tenant who, "shares bathroom or kitchen facilities with the owner of that accommodation". I find that the Tenant's Application for dispute resolution is within the jurisdiction of the Act, as the Landlord's agent who shared the rental unit kitchen with the Tenant was not the owner of the accommodation.

#### Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for damages and losses and recovery of the filing fee for the cost of this Application?

#### Background and Evidence

The parties agree the tenancy commenced on June 01, 2011, with a monthly rent of \$600.00 due on the first of each month, payable by the Tenant to the Landlord's agent. The parties agree that all utility costs were included in the rent. The parties agree that they had a month to month verbal tenancy agreement and that the rental accommodation was a furnished two bedroom two bathroom unit. The parties agree that the Tenant paid a full month's rent for December 2011 and that the tenancy ended on December 31, 2011.

The Tenant testified that the Landlord's agent verbally informed her in late October or early November 2011 that she would like the Tenant to find a new place for January 2012, because they were not getting along. The Tenant stated that she did look around to find other rental accommodation but that all of the other similar shared accommodation type of rental units wanted more money than the rent she was currently paying. The Tenant stated that she received a text message from the Landlord's agent on December 16, 2011 inquiring about whether she would be moving out for January 01, 2012. The Tenant stated that she informed the Landlord's agent that she would not be moving out for January 01, 2012 as she could not find anywhere to move to. The Tenant stated the Landlord's agent responded that she would be changing the locks, removing her belongings, and calling the police on the Tenant if the Tenant did not move out by the end of December 2011. The Tenant stated that she immediately began to look for another accommodation so that she could move out as the Landlord would no longer allow her to stay. The Tenant stated that it was not until December 16,

2011 that the Landlord's agent informed her that a new tenant had already rented the accommodation for January 01, 2012. The Tenant stated that she moved out for the end of December 2011 as required by the Landlord's agent. The Tenant stated that she had not received any written notice from the Landlord's agent.

The Landlord's agent agrees with the Tenant's testimony and confirms that no written notice was given. The Landlord's agent stated that she was no longer getting along with the Tenant and told her that it would be best if she found somewhere else to live. The Landlord's agent stated that she realized in July 2011 that the Tenant was not working out and they had first discussed it then. The Landlord's agent stated that she advised the Tenant at the end of October 2011 to find another place for January 01, 2012. The Landlord's agent stated that she obtained a new tenant for the rental unit who would be moving in for January 01, 2012. The Landlord's agent stated that when she asked the Tenant how her moving plans were going on December 16, 2011, the Tenant informed her that she was not moving out. The Landlord's agent stated that she may have overreacted when she heard this from the Tenant. The Landlord's agent stated that the Tenant did move out for the end of December 2011 as required. The Landlord's agent disputes that the Tenant is entitled to any compensation.

The Tenant stated that because of such short notice from the Landlord's agent she had to take a substandard accommodation on such short notice. The Tenant stated that she is now paying a higher monthly rent plus a portion of the utility bills for shared accommodation at her new place. The Tenant stated that she has to share a rental accommodation with four other people. The Tenant stated that she has not been able to find another rental unit for the same rent as what she was previously paying. The Tenant stated that the Landlord's agent made it very uncomfortable to live in the rental unit after December 16, 2011 and continued to harass her about moving out. The Tenant provided copies of text messages between herself and the Landlord. The Tenant requests \$600.00, which represents one month's rent, in compensation for damages and losses as a result of the Landlord's breaches of the Act and tenancy agreement.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord's agent did not provide the Tenant any written notice in accordance with the Act. The Act does not permit a Landlord or their agent to evict or provide a Tenant notice to end a tenancy based on a reason of not them not getting along. Section 44 of the Act states:

### **How a tenancy ends**

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Although the Tenant moved out in accordance with the Landlord's verbal notice, I find that the Landlord's notice was invalid and had the Tenant remained in the rental unit and refused to move out the Landlord would have been unable to evict her for the reasons the Landlord has provided.

Section 67 of the Act states:

### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Regulation,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 28 of the Act refers to a tenant's right to quiet enjoyment of the rental unit during the tenancy. Section 28 of the Act states:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord breached the Notice provisions of the Act and section 28 of the Act by unreasonably disturbing the Tenant including harassing her about moving out. I find that the evidence of the text messages and testimony of the parties supports that the Landlord's agent unreasonably disturbed the Tenant and that the Tenant has a loss of quiet enjoyment from December 16, 2011 until the tenancy ended on December 31, 2011. I am satisfied that the Tenant has suffered a loss of quiet enjoyment and is entitled to compensation of half a month's rent in the amount of \$300.00 for the Landlord's breach of the Act and tenancy agreement.

Although the Tenant has claimed \$600.00, I do not agree that the Tenant is entitled to any compensation beyond the amount of \$300.00. I grant the Tenant a monetary order for \$300.00.

As the Tenant has partially succeeded in her Application, I find that the Tenant is entitled to recover the \$50.00 fee for this proceeding, which brings the total amount owed to the Tenant to \$350.00. I grant the Tenant an order under section 67 for **\$350.00**.

Conclusion

I find that the Tenant is entitled to monetary order pursuant to section 67 against the Landlord in the amount of **\$350.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims).

The order accompanies the Tenant's copy of this decision.

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 05, 2012.

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Residential Tenancy Branch