



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, DRI, MNDC, FF

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution dealt under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), to dispute an additional rent increase, for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

The tenant acknowledged receiving the evidence of the landlord; the tenant's two pages of evidence were included with his application, received by the landlord.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

### Background and Evidence

This tenancy began in 1999, monthly rent is \$800.00 and the tenant paid a security deposit of \$325.00 at the beginning of the tenancy.

The 1 Month Notice which is the subject of this dispute was dated June 16, 2012, was posted on the tenant's door on that date and listed an effective end of tenancy date of July 31, 2012.

At the beginning of the testimony, the tenant stated that he was vacating the rental unit on or before July 31, 2012, the effective date on the Notice.

Due to this, the parties agreed that the tenancy would end and the landlord would be issued an order of possession for the rental unit, effective on July 31, 2012, at 1:00 p.m. The parties understand that there will be no finding on the merits of the alleged causes listed on the landlord's Notice of June 16, 2012.

As the primary issue of cancelling the Notice was dealt with, the remaining issues contained in the tenant's application were then considered.

As to the tenant's request to dispute an additional rent increase which was to be effective June 2012, the tenant stated that he had not been issued a notice in the proper format and confirmed that he had not paid any additional rent payments. As the tenancy is ending, it was no longer necessary to consider the tenant's request to dispute the rent increase.

As to the tenant's monetary claim of \$4800.00, the tenant stated this amount was compensation equivalent to one half month's rent for the past 12 months due to the landlord's constant intrusions on his right to quiet enjoyment. I note that the tenant reduced the amount listed on his application, \$5000.00, to \$4800.00.

The tenant stated that the landlord since at least the last year has constantly harassed him, putting different notices on his door, issuing unfounded Notices to end the tenancy and illegally entering his rental unit without proper written notice.

The tenant further stated that the entries by the landlord have sometimes been when he was away from the rental unit.

In response, the landlord denied harassing the tenant and that she has had to enter the rental unit to preserve her property, on an emergency basis. In further explanation, the landlord said that she needed to find out if the rental unit had been burglarized.

The landlord further submitted that the tenant has jeopardized her property by illegally changing the locks, which required her to enter the rental unit.

The landlord's relevant evidence included handwritten submissions, a copy of a notice posted by the tenant on his door and photographs of the rental unit.

The tenant denied preventing the landlord's access to the rental unit through a lock change as he has given the landlord any new keys made.

### Analysis

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

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance and interference.

I find that on his own, the tenant submitted insufficient evidence that the landlord violated the *Act* by depriving him of his right to quiet enjoyment. I find, however, that the landlord through her oral and written evidence confirmed that she was in the rental unit without sufficient written notice to the tenant to enter the rental unit at least twice in the last year. The photographs supplied by the landlord showed the landlord was in the rental unit to take pictures of the state of the rental unit and the landlord confirmed going into the rental unit on at least one other occasion, although the landlord contended the entries were for emergency purposes. I do not accept that the landlord entered the rental unit for emergency reasons as defined by the *Act*.

I find the landlord's two entries into the rental unit without proper written notices caused the tenant to have suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for those two times. As a result, I find the tenant is entitled to compensation for that loss.

Residential Tenancy Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed."

Due to the landlord's confirmation of at least two entries, I find a reasonable amount for a devaluation of the tenancy to be \$100.00, or \$50.00 for each unauthorized entry.

As I have found merit with the tenant's application, I award him recovery of the filing fee of \$100.00.

Conclusion

I find the tenant has established a monetary claim of \$200.00, comprised of \$100.00 as compensation for a devaluation of the tenancy due to the loss of his right to quiet enjoyment and recovery of the filing fee of \$100.00.

Pursuant to Section 67 of the Act, I have provided the tenant with a monetary order for \$200.00.

The monetary order for \$200.00 is enclosed with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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: July 10, 2012.

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Residential Tenancy Branch