



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNL; MNDC; OLC; PSF; RPP; LRE; FF

### **Introduction**

This Hearing was scheduled to determine the Tenant's Application for Dispute Resolution filed September 17, 2012, seeking compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord comply with the Act, regulation or tenancy agreement; Orders that the Landlord provide services or facilities required by law, return of the Tenant's personal property and suspending or setting conditions on the Landlord's right to enter the rental unit; and to recover the filing fee from the Landlord. On September 27, 2012, the Tenant's Application was amended to include an application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Rental Property* issued September 22, 2012 (the "Notice").

At the start of the Hearing I introduced myself to the participants, explained the hearing process and provided the parties an opportunity to ask questions about the hearing process. The parties were provided the opportunity to submit documentary evidence prior to the hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The Tenant testified that she sent the Notice of Hearing documents, via registered mail, to the Landlord on September 17, 2012. She stated that she provided the Landlord a copy of her amended Application on September 27, 2012, and copies of her documentary evidence on September 28, 2012. The Landlord acknowledged service in this manner.

The Landlord testified that he provided the Tenant copies of his documentary evidence by attaching them to her door on October 11, 2012. The Tenant acknowledged receipt of the documents on October 11, 2012.

I have considered all testimony and documentary evidence provided.

### **Preliminary Matters**

The Landlord asked to address two preliminary matters at the outset of the Hearing:

1. He stated that he has refunded the Tenant the \$4.00 that she paid to make him a copy of a set of keys to the rental unit and common property. The Tenant

- acknowledged receipt of this refund.
2. The Landlord asked that if I determine that the washer and dryer in the main house are the property of the Tenant, he be permitted to add a third party to the proceedings.

### **Issue(s) to be Decided**

- (1) Should the Notice be cancelled?
- (2) Is the Tenant entitled to compensation for loss of use of the laundry; loss of quiet enjoyment; and restricted access to the residential property?
- (3) Should the Landlord be ordered to comply with Sections 27, 28 and 30 of the Act?
- (4) Should the Landlord be ordered to provide the Tenant access to laundry facilities and to return a washer and dryer to the Tenant?
- (5) Should the Landlord's right of access to the rental unit be restricted or suspended?

### **Background and Evidence**

The rental unit is a one bedroom suite (the "studio") above a garage and storage area. Situated on the same property is a 6 bedroom house. This tenancy began on October 1, 2011. The property was foreclosed on in May of 2012, and title to the property transferred to the mortgage holder on May 11, 2012. The Landlord and his wife are the only shareholders in a holding company which assumed the tenancy from the mortgage holder on September 13, 2012, when the company purchased the property from the mortgage holder.

The Tenant and her original landlords signed a tenancy agreement on October 1, 2011, a copy of which was provided in evidence. On June 2, 2012, the Tenant signed a new tenancy agreement with the mortgage holder.

Monthly rent is \$750.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$350.00.

On September 22, 2012, the Landlord issued the Notice and posted it on the Tenant's door. The Tenant acknowledged receiving the Notice on September 22, 2012. The Notice indicates that, "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse". In this case, the Landlord submits that his daughter will be moving into the rental unit.

The Tenant questioned the Landlord's motives for issuing the Notice, considering that she had served him with her Application for Dispute Resolution only days before. The Tenant stated that it would make more sense for the Landlord's daughter to move in with the Landlord because her new job was much closer to the Landlord's residence.

The Landlord stated that when he initially purchased the home, he did not consider that his daughter might move into the studio because she was then living in Alberta. He testified that his daughter has recently completed a health care aide program and decided to move to BC, where the pay rate is approximately \$4.00 more per hour. She sent out resumes and recently secured a position locally. The Landlord stated that the rent for the suite is reasonable and affordable for his adult daughter, who values her independence.

The studio is accessed by a long stair case which required repair. The Tenant stated that the Landlord knew that her family was coming to visit from England, and that the Landlord had assured her he would compromise and only fix a couple of the steps, but that he took down all of her stairs the day before her parents arrived. She submitted that she was not given due notice for these repairs to be done. The Tenant stated that she had errands to do in order to prepare for her parents' visit the next day and that she was not able to leave her home from 10:00 a.m. to 4:30 p.m. while the Landlord worked on the stairs. The Tenant submitted that this was a breach of her quiet enjoyment and restricted her right to access the property.

The Landlord testified that he had ordered an inspection of the property before he purchased it. He stated that the inspector recommended immediate repair or replacement of the stairs because they were dangerous. He stated that he initially thought he could replace only a few steps, hoping to complete the interim repairs in a short time thereby minimizing the inconvenience to the Tenant, and then complete the full repairs after the Tenant's parents had gone home but that it became apparent that the wood was too rotten and the stairs were too dangerous. The Landlord stated that he gave the Tenant a few opportunities to leave her residence while the stairs were still passable, but the Tenant chose to stay in. The Landlord stated that there were only about 1 ½ hours in total when the steps were impassable.

The Tenant stated that her tenancy agreement included the use of laundry facilities and the washing machine and dryer that were located in the garage below her were not properly hooked up. She testified that the washing machine and dryer that are located in the main house were given to her by her first landlords in recognition of work that she had done around the property and that they had an agreement that she could use the laundry facilities in the main house. The Tenant seeks an Order that she be allowed to continue to use the laundry facilities in the main house and that the Landlord recognize

that the washer and dryer are her property. The Tenant provided a copy of a letter from her first landlords dated May 5, 2012, indicating that the washer and dryer were being gifted to her. The Tenant testified that the Landlords have changed the locks to the main house and therefore she no longer has access to the washer and dryer.

The Landlord stated that he investigated the washer and dryer hook ups in the garage and discovered that the washing machine had been unplugged. He stated that when he plugged it in, it worked satisfactorily. The Landlord stated that he also noticed that there were a couple of wires that had come loose leading from the dryer to the electrical box and that he was able to reattach the wires. The Landlord testified that both appliances are now fully functioning and that the Tenant is welcome to use them. The Landlord provided a copy of the Contract of Purchase and Sale for the property, which indicates that the purchase price included "the washer, dryer, all existing appliances in rental suite".

The Landlord requested an Order of Possession.

### **Analysis**

In an application such as this, where the Landlord has issued a Notice to End Tenancy for Landlord's Use of Property, the burden is on the Landlord to establish that he truly intends to do what he indicated on the Notice to End Tenancy. When the Tenant has called into question the Landlord's motive for issuing the Notice, the Landlord must also establish that he does not have an ulterior motive for ending the tenancy as his primary motive.

The Landlord provided a copy of page one of his daughter's tenancy agreement in Alberta; a copy of a letter of reference for his daughter from a college in Alberta; a copy of a document confirming his daughter's completion of the health care aide program; a copy of his daughter's resume; a copy of a ferry receipt from Tsawwassen to Swartz bay dated September 15, 2012; and a copy of an offer of employment as a resident care worker in a local retirement home dated September 21, 2012. The Landlord's daughter moved to BC on September 15, 2012, and secured a position of employment on September 21, 2012, which is one day before the Landlord issued the Notice. I am satisfied that the Landlord intends for his daughter to move into the rental unit. I am also satisfied that this is his primary motive for ending the tenancy. Therefore, the Tenant's application to cancel the Notice to End Tenancy issued September 22, 2012, is **dismissed**.

The Notice to End Tenancy issued September 22, 2011, was received by the Tenant on September 22, 2011, and therefore I find the effective end of tenancy date is November 30, 2012. During the Hearing the Landlord asked for an Order of Possession. Further

to the provisions of Section 55 of the Act, I hereby provide an Order of Possession to the Landlord effective at 1:00 p.m., November 30, 2012.

During the Hearing, the Tenant stated that she was aware of the compensation equivalent to one month's rent allowed under Section 51(1) of the Act.

Both parties are hereby advised of the provisions of Section 51(2) of the Act, which states:

**Tenant's compensation: section 49 notice**

51 (2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The Tenant signed a tenancy agreement with the mortgage holder on June 2, 2012, and I find that in so doing the tenancy agreement dated October 1, 2011, was no longer in effect. Although there is no term in the June 2, 2012, agreement with respect to laundry facilities, during the Hearing, the Landlord agreed that the washer and dryer in the garage were for the Tenant's use. Therefore, I find that laundry facilities are included in the tenancy agreement, effective October 19, 2012.

It is clear that the Tenant had a close relationship with her former landlords. Although the Tenant enjoyed the privilege of use of her former landlord's laundry facilities, I do not find it reasonable to expect her current Landlord to allow the Tenant, a stranger, access to the main house. As I explained to the parties, with respect to the ownership of the washer and dryer in the main house, I make no finding. The Tenant may, or may not, have a claim against the washer and dryer but it is not within the jurisdiction of the Residential Tenancy Act to decide that issue.

The Landlord has a responsibility under Section 32 of the Act to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. I accept the Landlord's evidence (photographs and the inspection report) that the stairs were dangerous and in need of immediate repair. Had the Landlord waited to repair the steps and the Tenant or another person been injured as a result, he may have been held responsible for those

injuries. I find that these repairs fall within the definition of “emergency repairs” under Section 33(c)(vi) of the Act.

Unless the Landlord has the Tenant’s permission, he must provide 24 hours written notice of his intent to enter the rental unit for a reasonable purpose. There is no such requirement for the Landlord to provide similar notice in order to do emergency repairs at the rental property.

The Tenant provided no evidence that the Landlord has illegally entered the rental unit.

For the reasons stated above, I do not find that the Tenant has provided sufficient evidence to warrant a monetary award in the amount of \$5,000.00 for loss of peaceful enjoyment, restricted access, or loss of the laundry facility. I decline to make any of the Orders requested by the Tenant.

The Tenant has not been successful in her application and therefore I order that the Tenant bear the cost of the filing fee.

### **Conclusion**

The Tenant’s application to cancel the *2 Month Notice to End Tenancy for Landlord’s Use of Property*, issued September 22, 2012, is dismissed. I also dismiss the remainder of the Tenant’s application.

I find that use of the laundry facilities located in the garage is a term of the tenancy agreement, effective October 19, 2012.

The Landlord is provided an Order of Possession effective **1:00 p.m., November 30, 2012**. This Order must be served on the Tenant and may be filed in the Supreme 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: October 22, 2012.

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Residential Tenancy Branch