



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDC, OLC, PSF, RR, FF

### Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to provide services or facilities required by law / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began on or about June 30, 2010. Monthly rent is \$450.00. The tenants testified that at the start of tenancy they paid \$450.00 for the "first month's rent," and \$450.00 for the "last month's rent." The original landlord sold the unit to the current landlord who took possession on or about March 8, 2013.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated March 24, 2013. The notice was served in-person on the tenants on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is May 31, 2013. The reason shown on the notice in support of its issuance is as follows:

The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

The tenants filed their application for dispute resolution on April 3, 2013. In their application the tenants have not applied to have the 2 month notice set aside. During the hearing the tenants testified that it is their intention to vacate the unit by no later than May 31, 2013.

The tenants claim that the landlord has restricted access to certain land that had previously been available to them for their horses. The tenants claim that the access was provided by the original landlord, however, it is understood that no formal written agreement was entered into between the parties in this regard. As a result, the tenants seek compensation equal to a total of one month's rent in the amount of \$450.00, apportioned as  $\frac{1}{2}$  for April (\$225.00) and  $\frac{1}{2}$  for May (\$225.00).

Further, the tenants seek compensation for lost wages in the amount of \$120.00 (4 hours x \$30.00 per hour). The tenants claim that this loss arose on March 18, 2013 when tenant "KE" left work to attend the unit after receiving a telephone call from tenant "LL." Tenant "LL" was said to be upset as a result of the landlord's presence and activity around the property. The parties appear to agree that when tenant "KE" arrived at the unit, his interaction with the landlord was not in excess of approximately one hour.

Additionally, the tenants seek compensation for lost wages in the amount of \$270.00 (9 hours x \$30.00 per hour). This aspect of the claim arises from time required to prepare documents and file the application for dispute resolution on April 3, 2013.

During the hearing the parties addressed the circumstances surrounding the various aspects of the dispute, while the witness testified to the contents of his letter dated March 31, 2013, a copy of which was submitted in evidence.

In part, the witness' letter states that arising from a verbal agreement between the original landlord and the tenants, the tenants "shall occupy the trailer and have free access to, and use of all the land on the lower bench in exchange for improving that land and monitoring all traffic.....for the rental payment of \$450.00 per month payable in advance."

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

The parties agreed that no payment of rent for May was made in 2013. The tenants testified that they withheld payment pursuant to what they understand is their legal

entitlement under the circumstances. In this regard, section 51 of the Act addresses **Tenant's compensation: section 49 notice**, and provides in part:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

Residential Tenancy Policy Guideline # 17 addresses "Security Deposit and Set off," and provides in part as follows:

12. The obligations of a landlord with respect to a security deposit run with the land or reversion. Thus, if the landlord changes, the new landlord retains these obligations.

While there is no evidence that a security deposit, as such, was collected at the start of tenancy, as earlier noted the tenants testified that further to paying the first month's rent of \$450.00 at the start of tenancy, an additional \$450.00 was paid for the last month's rent at that same time. The parties are encouraged to resolve between them (and the original landlord if possible), the matter of the "last month's rent." If it is determined that rent for May 2013 has already been paid, then the impact of section 51, as above, must be considered. This matter, however, is not presently before me.

Based on the documentary evidence and testimony, and in consideration of the applicable legislation, the various aspects of the tenants' application and my findings around each are set out below.

\$450.00 (\$225.00 + \$225.00) *compensation for restriction of services or facilities.*

As previously noted, the witness' letter speaks to the verbal agreement between the original landlord and the tenants around the "use of all the land." When the current landlord neared taking possession of the property he corresponded with the tenants by letter dated February 26, 2013. In his letter, the landlord states in part as follows:

**Your horses:** must be relocated to the opposite side of the driveway from their present location. You must also relocate your temporary fencing to

accommodate this condition. Eventually we will replace your temporary fencing with our own permanent fencing to match the rest of the property. You will continue to be responsible for feed and water of said horses. This may be a temporary move until the entire property has been fenced and we reserve the right to change this condition to suit our purposes in the future.

Section 27 of the Act addresses **Terminating or restricting services or facilities**:

27(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 value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Clearly there are difficulties arising from the absence of formal written agreements between the original landlord and the tenants when the tenancy began. However, even if I am unable to conclude that the tenants' access to and use of certain land prior to sale was not a material term of the tenancy agreement, I find that they had become accustomed to the access and use during the term of tenancy. I further find that the landlord's letter of February 26, 2013, does not constitute "30 days' written notice" of changes to the tenants' previous access to and use of the property. Accordingly, I find that the tenants have established entitlement in the limited amount of **\$300.00**.

*\$120.00: lost wages related to tenant "KE's" attendance to the unit (March 18, 2013).*

I note that tenant "KE's" decision to leave work and return to the unit arose from a telephone call he received from tenant "LL," and that tenant "LL" was upset about the landlord's presence and activity around the property. I am not persuaded, however, that

the landlord's presence and activity led to a breach of the tenants' right to quiet enjoyment, and neither have the tenants specifically claimed such a breach. Accordingly, this aspect of the application is hereby dismissed.

For information, the attention of the parties is drawn to section 28 of the Act which speaks to **Protection of tenant's right to quiet enjoyment**, and Residential Tenancy Policy Guideline # 6 which addresses "Right to Quiet Enjoyment."

\$270.00: *lost wages related to filing the application for dispute resolution (April 3, 2013).*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the tenants' application is hereby dismissed.

\$50.00: *filing fee.*

As the tenants have achieved partial success with their application, I find that they have established entitlement limited to recovery of **\$25.00**.

All remaining aspects of the tenants' application are hereby dismissed.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$325.00** (\$300.00 + \$25.00). This order may be served on the landlord, filed in the Small Claims 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: May 03, 2013

---

Residential Tenancy Branch

