



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, MNDC, OLC, RP, PSF, LRE, LAT, RR, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities required by law; for authorization to change the locks; to suspend or set conditions on the Landlord's right to enter the rental unit; for authorization to reduce the rent for repairs, services, or facilities agreed upon but not provided; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

At the hearing on August 27, 2013 the Tenant stated that this hearing was originally scheduled for August 12, 2013 and that it was rescheduled at the request of the Landlord. She stated that she was not advised that she needed to serve the Landlord with the Notice of Hearing for the new date and she does not know if the Landlord was served with notice of the new date.

As the Landlord was not in attendance at the hearing on August 27, 2013 and I have no evidence to confirm that the Landlord was served with Notice of the Hearing for this date, I adjourned the hearing. The Tenant was advised that she will receive a Notice of Reconvened Hearing from the Residential Tenancy, which she must serve on the Landlord.

At the hearing on October 17, 2013 the Tenant stated that she served the Notice of Hearing for this hearing to the Landlord, via registered mail, on October 02, 2013. In the absence of evidence to the contrary, I find that the Landlord was served with notice of the hearing on October 17, 2013 in accordance with section 89 of the *Act*, and the hearing proceeded in the absence of the Landlord.

The Tenant stated that the Application for Dispute Resolution and documents the Tenant wishes to rely upon as evidence were personally served to the Landlord on

August 06, 2013. In the absence of evidence to the contrary, I find that these documents were served to the Landlord and they were accepted as evidence for these proceedings.

The Tenant stated that an amended Application for Dispute Resolution and additional evidence the Tenant wishes to rely upon were served to the Landlord, via registered mail, on October 02, 2013. In the absence of evidence to the contrary, I find that these documents were served to the Landlord and they were accepted as evidence for these proceedings. In the amended Application for Dispute Resolution the Tenant increased the amount of her claim to \$3,538.99 and she added a claim to recover the security deposit.

At the hearing on October 17, 2013 the Tenant stated that she has vacated the rental unit and she withdrew all of her claims, with the exception of the monetary Order for money owed or compensation for damage or loss, the application to recover her security deposit, and the application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

#### Issue(s) to be Decided

Is the Tenant entitled to financial compensation for loss of quiet enjoyment of the rental unit and for being required to vacate the rental unit, and is she entitled to recover the security deposit?

#### Background and Evidence

The Tenant stated that this tenancy began on March 01, 2012; that she was required to pay monthly rent of \$1,000.00; that she paid a security deposit of \$500.00; that on August 04, 2013 the Landlord served her friend with a One Month Notice to End Tenancy for Cause; that she received this Notice from her friend on August 04, 2013; that the Notice declared that she must vacate the rental unit by August 31, 2013, that she vacated the rental unit on August 31, 2013; that she has not yet provided her Landlord with a forwarding address, in writing; that she did not authorize the Landlord to retain any portion of her security deposit; and that the security deposit has not been returned to her.

The Tenant is seeking compensation, in the amount of \$800.00, for the Landlord breaching her right to the quiet enjoyment of her rental unit on August 02, 2013. The Tenant stated that on the morning of August 02, 2013 she received a message from her Landlord, in which he informed her that a production company would be filming at the residential property; that she is not certain whether the Landlord informed her that her rental unit would be accessed; that she subsequently spoke with the Landlord and informed him that he did not have permission to access her rental unit; that she arrived home at approximately 1:00 p.m. on August 02, 2013 and she found power cords leading out of her rental unit, a male from the production company inside her rental unit, a light set up in her living room, and a light set up in the common laundry room; that the

male from the production company complied with her request to leave the rental unit; that within one hour the production company and landlord had complied with her request to remove the power cords and light from her rental unit; that after the rental unit had been cleared of unwanted property/persons the Landlord entered the unit, without knocking, to argue about the filming; that the Landlord followed her into the rental unit a second time that afternoon to continue arguing about the filming; that the Landlord did not promptly comply with her request to leave her rental unit on the second occasion; that the Tenant eventually left her rental unit after the Landlord refused to leave on the second occasion; that she reported the incident to the police; and that by the time the police arrived the landlord had vacated the rental unit.

The Tenant is seeking compensation, in the amount of \$854.76, for moving costs. The Tenant stated that she does not believe the Landlord had grounds to end the tenancy pursuant to section 47 of the *Act*; that she disputed the One Month Notice to End Tenancy that she received on August 04, 2013; that a hearing into that matter was delayed until August 27, 2013; that the hearing on August 27, 2013 was adjourned until October 17, 2013; that she believed she had to vacate the rental unit on August 30, 2013, which was the declared effective date of the Notice to End Tenancy, as the hearing into the matter had not yet been held; and that she did vacate the rental unit on August 30, 2013.

The Tenant is seeking compensation, in the amount of \$584.23, because the rental unit was inadequately heated. The Tenant stated that the two bedrooms in the unit were heated by baseboard heaters; that a forced air furnace heated the remainder of the unit, which was controlled by the landlord in a separate location of the residential complex; that in spite of her repeated requests to increase the setting on the furnace the Landlord refused to increase the temperature; and that there was a gas fireplace in the rental unit, which was an expensive way of heating the unit. She stated that she monitored the temperature in the rental unit and that it was usually 16 degrees in the areas heated by the furnace, unless it was warm outside or she was using the gas fireplace.

The Tenant is seeking compensation, in the amount of \$100.00, for property damaged by water. The Tenant stated that condensation regularly formed on the toilet and would pool on the floor; that she would regularly wipe the condensation; that there was so much water it travelled down her hallway and into her closet; that she did not realize that the water was travelling into the closet until she moved, at which time she noted all of the shoes in that closet had mould growing on them; and that she discarded approximately 15 pairs of shoes that were damaged by mould. She stated that she reported the condensation problem to the Landlord on several occasions and he advised her that he could not remedy the problem. The Tenant submitted copies of emails that corroborate this testimony.

The Tenant is seeking compensation, in the amount of \$200.00, for an ant infestation. The Tenant stated that every few months ants would enter her rental unit; that the ants would sometimes be present for a few days and sometimes for a few weeks; that she reported the problem to the Landlord; that the Landlord poisoned the ants after her first

two reports, which temporarily resolved the problem; and that she then poisoned the ants whenever they appeared, as was suggested by the Landlord. The Tenant submitted copies of emails that corroborate this testimony. She stated that there were hundreds of ants and she believes the Landlord should have provided a more permanent solution. The Tenant submitted a video that shows numerous ants crawling on the floor of her rental unit.

### Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. As the Tenant has not yet provided the Landlord with a forwarding address, in writing, the Tenant does not yet have the right to the return of her security deposit. The Tenant retains the right to file another Application for Dispute Resolution seeking the return of the security deposit if the Landlord does not return the security deposit within fifteen days of receiving a forwarding address for the Tenant, in writing.

On the basis of the undisputed evidence of the Tenant, I find that the Landlord breached section 29 of the *Act* when he allowed people to access the rental unit for the purposes of filming without the Tenant's permission and without providing proper notice. I also find that the Landlord breached section 28 of the *Act* when he allowed people to access her rental unit for the purposes of filming after the Tenant clearly told him he was not entitled to enter the rental unit for this purpose.

Section 29(1)(b) of the *Act* authorizes a landlord to enter a rental unit, with proper written notice, for a purpose that is reasonable. Even if the Landlord had given proper notice to enter the rental unit, I find that he would not have had the right to enter the rental unit for the purpose of filming without the explicit consent of the Tenant. I find that entering a rental unit for the purposes of filming is a significant invasion of privacy and, given that it has nothing to do with the landlord's right to maintain and protect the residential property, I cannot conclude that this is a reasonable purpose.

I find that the incident on August 02, 2013 was a significant breach of the Tenant's right to the quiet enjoyment of her rental unit. I therefore find that she is entitled to compensation in the amount of \$500.00, which is the equivalent of ½ of 1 month's rent. An award for a breach of the right to the quiet enjoyment of the rental unit is inherently arbitrary. This award is greater than I would normally award for an unlawful entry, which reflects the Landlord's complete disregard to the Tenant's instructions not to enter the rental unit and the fact that the entry was not related to the Landlord's obligation and right to maintain the residential property.

I find that the Tenant was not obligated to vacate the rental unit on August 30, 2013, as she had filed an Application for Dispute Resolution in which she applied to cancel the

Notice to End Tenancy for Cause that she received on August 04, 2013. Given that she had filed this Application for Dispute Resolution, I find that the Tenant was entitled to remain in the rental unit until these proceedings were concluded. As the Tenant was not obligated to vacate the rental unit until these proceedings were concluded, I find that she is not entitled to compensation for moving costs.

It is not necessary for me to determine whether the Residential Tenancy Branch did not inform the Tenant she did not need to vacate until these proceedings were concluded or whether the Tenant simply misunderstood the information that was provided to her. Regardless, the Landlord is not responsible for either mistake and he is not liable for any costs associated to that mistake.

Section 32(1) of the *Act* requires landlords 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, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Although the Tenant submitted no evidence to show that there are health, safety, or housing standards that require a landlord to provide adequate means of heating a rental unit, I find it is reasonable to presume that such standards exist.

In the absence of evidence to the contrary, I accept the Tenant's testimony that the furnace in the residential complex maintained the temperature in the rental unit at approximately 16 degrees. I find, however, that the Tenant had alternate means of heating the rental unit. I find that she had the ability to supplement the heat provided by the furnace with baseboard heaters and a gas fireplace. As she had alternate means of heating the rental unit, I find that the Landlord complied with his obligation to provide an adequate means of heating the rental unit. I specifically note that the Landlord is not obligated to provide the Tenant with the least expensive method of heating the rental unit and I accept that using a gas fireplace may not be the most efficient method of maintaining room temperatures. As the Landlord complied with his obligation to provide an adequate source of heat, I dismiss the Tenant's claim for compensation for being without adequate heat.

I find it reasonable to conclude that a Landlord is obligated to fix a leaking toilet, pursuant to section 32(1) of the *Act*, even if the "leak" is the result of condensation. As the Landlord did nothing to remedy the "leaking" toilet after being advised of the problem, I find that the Tenant is entitled to compensation for the inconvenience of wiping up the water and for damage to her personal property related to that moisture. The Tenant has only claimed \$100.00 in compensation and I find that claim more than reasonable, given that she discarded approximately 15 pairs of shoes.

On the basis of the testimony of the Tenant and the video evidence submitted, I find that the presence of ants in the rental unit breached the Tenant's right to the quiet enjoyment of her rental unit. In reaching this conclusion I was heavily influenced by the video evidence, which demonstrates an excessive amount of ants. Given the extent of the problem, I find that the Landlord should have hired an exterminator to provide a

more permanent solution to the problem, rather than periodically poisoning the ants. The Tenant has claimed \$200.00 in compensation and I find that claim reasonable, given that she had to live with the ants and then discard the ants once they have been poisoned.

As the Tenant's Application for Dispute Resolution has merit, I grant her application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Tenant has established a monetary claim, in the amount of \$850.00, which includes \$500.00 for the unlawful entry, \$100.00 for living with a "leaking" toilet; \$200.00 for living with ants; and \$50.00 for filing this Application for Dispute Resolution. I grant the Tenant a monetary Order for \$850.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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: October 18, 2013

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Residential Tenancy Branch

