



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lonsdale & First Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNL, MNDC, OLC, ERP, RP, PSF, FF

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for landlord's use of property / 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 make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / an order instructing the landlord to provide services or facilities required by law / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The subject unit is located within a wood frame, three storeyed building. There are 10 rental units located on the top two storeys, with retail space located on the bottom level.

Pursuant to a written tenancy agreement, tenancy began in the subject unit on August 1, 2009. However, it is understood that prior to this the tenant lived in unit # 5, and that her tenancy in that unit began in 1999. Monthly rent at the outset of tenancy in the subject unit was \$1,500.00. The current monthly rent is \$1,650.00. A security deposit was initially collected with respect to unit # 5, and an additional amount was collected at the start of the subject tenancy. It is understood that a security deposit of \$825.00 was collected in total, and that this amount is still currently held in trust by the landlord.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated August 27,

2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 31, 2013. The reason identified on the notice in support of its issuance is as follows:

The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant filed an application to dispute the notice on September 6, 2013.

Further to cancellation of the notice, the tenant seeks certain orders and compensation in the total amount of \$21,450.00. The compensation sought arises principally out of the tenant's claims that the value of the rental was diminished because of a range of miscellaneous unit deficiencies, and breaches of her right to quiet enjoyment.

During the hearing the parties undertook to achieve a resolution of the dispute.

### 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)

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

### **RECORD OF SETTLEMENT**

- that the tenant will vacate the unit by not later than **Friday, January 31, 2014**, and that an **order of possession** will be issued in favour of the landlord to that effect;
- that pursuant to section 51 of the Act which speaks to **Tenant's compensation: section 49 notice**, the tenant's rent for January 2014 is waived;
- that the tenant's **rent** for November and December 2013 is also **waived**;
- that the landlord will pay the tenant **\$5,500.00** by way of **Bank Draft** which is dated and delivered to the tenant by no later than **midnight, Thursday, October 31, 2013**, and that a **monetary order** will be issued in favour of the tenant for that amount;

- that the above particulars comprise **full and final settlement** of all issues in dispute which arise out of this tenancy and which are currently before me.

As the end of tenancy nears, the attention of the parties is drawn to section 37 of the Act which speaks to **Leaving the rental unit at the end of a tenancy**, as follows:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Further, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **Friday, January 31, 2014**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$5,500.00**. Should it be necessary, 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: October 16, 2013

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Residential Tenancy Branch

