



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, MNDC, OLC, ERP, RPP and LRE

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant 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 make emergency repairs
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement
- for an Order suspending or setting conditions on the Landlord's right to enter the rental unit
- for an Order requiring the Landlord to return personal property to the Tenant.

On March 28, 2014 the Tenant filed an Application for Dispute Resolution seeking to set aside a Notice to End Tenancy. The Tenant stated that she personally served this Application for Dispute Resolution and the Notice of Hearing to the Landlord on March 28, 2014. The Landlord acknowledged receipt of these documents.

On April 22, 2014 the Tenant amended her Application for Dispute Resolution to include all of the other claims listed above. The Tenant stated that she sent the amended Application for Dispute Resolution to the Landlord, via registered mail, on April 22, 2014. The Landlord acknowledged receipt of these documents.

At the outset of the hearing on May 15, 2014 the Tenant stated that she has vacated the rental unit and she withdrew all of her claims, with the exception of the claim for a monetary Order in the amount of \$2,000.00.

At the hearing on May 15, 2014 the Tenant stated that on May 08, 2014 she submitted documents and digital evidence to the Residential Tenancy Branch, although Residential Tenancy Branch audit notes have no record of this submission. The Tenant stated that a copy of this evidence was placed in the Landlord's mailbox on May 08, 2014. The Landlord acknowledged receipt of the Tenant's evidence.

At the hearing on May 15, 2014 the Tenant was advised that I was unable to locate her evidence package. As it is possible the package was misplaced by the Residential Tenancy Branch, the Tenant was advised at the hearing that she could resubmit the evidence package to the Residential Tenancy Branch. The Tenant was advised that I do have the Notice to End Tenancy that was submitted in evidence and it was accepted as evidence for these proceedings.

An interim decision was generated in which the Tenant was reminded that she should resubmit her evidence package to the Residential Tenancy Branch. At the hearing on July 21, 2014 the Tenant stated that she did not recall being told during the hearing on May 15, 2014 that she should resubmit her evidence to the Residential Tenancy Branch; she did receive and read the Interim Decision; and that she did not understand that she needed to resubmit her evidence.

At the hearing on July 21, 2014 the Tenant was advised that she has had ample opportunity to submit her evidence and that I would not adjourn the hearing again. She was given the opportunity to withdraw her Application for Dispute Resolution or to proceed with her claim, with the understanding that her documentary evidence is not available to me. The Tenant opted to proceed.

On May 12, 2014 the Landlord submitted documents and digital evidence to the Residential Tenancy Branch. At the hearing on May 15, 2014 the Landlord stated that he has been unable to serve this evidence to the Tenant as she has vacated the rental unit and has not provided the Landlord with a new service address. The Tenant stated that she provided the Landlord with a mailing address, by telephone, on May 10, 2014.

As I was unable to determine whether the Tenant is being truthful when she stated that she provided the Landlord with a service address after she vacated the rental unit or whether the Landlord is being truthful when he stated that the only service address provided was the address of the rental unit, I adjourned the matter to provide the Landlord with the opportunity to serve evidence to the Tenant. The Tenant provided a mailing address to the Landlord at the hearing on May 15, 2014.

At the hearing on July 21, 2014 the Tenant stated that she still has not received any evidence from the Landlord. In the absence of any evidence from the Landlord to show that the Landlord's evidence package was served to the Tenant, I cannot accept the Landlord's documents as evidence.

Only the Tenant was represented at the hearing on July 21, 2014. She was provided with the opportunity to present relevant oral evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?

Background and Evidence provided on May 15, 2014:

At the hearing on May 15, 2014 the Landlord and the Tenant agreed that this tenancy began on February 26, 2014 and that it ended on April 28, 2014.

Background and Evidence provided on July 21, 2014:

The Tenant stated that she agreed to pay monthly rent of \$500.00 for a three bedroom, partially furnished suite on the upper floor of this residential complex. She stated that when she discussed this tenancy with the Landlord she understood that she would be the only person occupying the rental unit.

The Tenant stated that she cannot recall when she received the One Month Notice to End Tenancy for Cause, which is dated March 25, 2014. She stated that although she disputed this Notice she informed the Landlord, on April 12, 2014, that she would be vacating as soon as possible.

The Tenant is seeking compensation for the withdrawal of laundry and storage facilities.

The Tenant stated that when she moved into the rental unit the Landlord told her that she could use a room on the lower level of the residential complex for storage and that she did move her property into that room at the start of the tenancy. She stated that on April 08, 2014 the Landlord asked her to move her property from the storage room and that she had to store it in her rental unit, which limited the space she had in her unit.

The Tenant stated that when she moved into the rental unit the Landlord told her that she could use the laundry facilities on the lower level of the residential complex and that she did use those facilities for the first week of March. She stated that after the first week the door providing her access to the laundry facilities was locked and the Landlord did not comply with her repeated requests for access to the facilities. The Tenant stated that the Landlord moved into the lower rental unit in the middle of March, at which time he told her she could no longer use the laundry facilities.

The Tenant is also seeking compensation for the loss of the quiet enjoyment of her rental unit. She stated that her mother stayed overnight in the unit on the day she moved in; that her mother awoke in the middle of the night to use the washroom; that her mother was disoriented because she was unfamiliar with the rental unit; and that her mother fell down the interior stairs of the rental unit.

The Tenant stated that when she moved into the rental unit there was a male occupying

one of the bedrooms in the upper suite and that in the middle of March some of the Landlord's family moved into the third bedroom in the upper suite. She stated that this was particularly problematic for her as the original occupant of the suite was confrontational and threatened to assault her. She is seeking compensation for the loss of quiet enjoyment of the rental unit as a result of other people occupying her rental unit.

### Analysis

Section 27 of the *Act* authorizes a landlord to terminate a non-essential service or facility that is not a material term of the tenancy if the landlord reduces the rent by an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant was told that she could use a room on the lower portion of this residential complex for storage and that the Landlord prevented her from using this storage area for the period between April 08, 2014 and April 28, 2014. I find that a storage facility is not a material term of this tenancy nor is it an essential service, so the Landlord had the right to terminate this facility and that the Tenant has the right to a rent reduction as a result of that termination.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant was told that she could use the laundry facilities on the lower portion of this residential complex and that she was unable to use those facilities for the period between March 07, 2014 and April 28, 2014. I find that laundry facilities are not a material term of this tenancy nor are they an essential service, so the Landlord had the right to terminate this facility and that the Tenant has the right to a rent reduction as a result of that termination.

Determining the value of a service or facility is highly subjective, however I find it reasonable to conclude that removing a storage area reduced the value of this tenancy by approximately 10% and withdrawing the use of laundry facilities also reduces the value of the tenancy by 10%, which is \$50.00 per month for each service. As the Tenant was without the use of the storage area for 20 days in April, I find that she is entitled to 20 days of compensation at the per diem rate of \$1.67, which equates to \$33.40. As the Tenant was without the use of the laundry facilities for approximately 24 days in March and 28 days in April, I find that she is entitled to 52 days of compensation at the per diem rate of \$1.67, which equates to \$86.84.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant only if the tenant suffers damage or loss as a result of the landlord failing to comply with this *Act*, the *Residential Tenancy Regulations*, or a tenancy agreement. The undisputed evidence is that the Tenant's mother fell down the stairs because she became disoriented in the night. There is no evidence to suggest that the Landlord contributed to the fall by failing to comply with the legislation or the tenancy agreement. I therefore

dismiss the Tenant's claim for compensation arising from this incident.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant entered into a tenancy agreement that gave her the exclusive right to occupy the rental unit. On the basis of the undisputed evidence I find that one of the bedrooms in the three bedroom suite was occupied by a third party when this tenancy began and that the Landlord's relatives moved into another of the bedrooms sometime in middle of March of 2014.

I find that the Landlord breached the Tenant's right to the quiet enjoyment of her rental unit when the Landlord allowed other people to occupy rooms in the rental unit. Given that the Tenant expected to be the only person occupying the rental unit and she did not get along with the person who was occupying the unit when she moved into the unit, I find this to be a significant breach of her right to quiet enjoyment, for which she is entitled to compensation of \$500.00, which is approximately 50% of the rent due for this tenancy that lasted little more than two months.

I would normally grant greater compensation for a breach of this nature, however in these circumstances I find that the Tenant failed to mitigate her losses by immediately filing an Application for Dispute Resolution. I note that the Tenant did not file an Application for Dispute Resolution seeking compensation for the breach until April 22, 2014 and she has never sought an Order providing her with exclusive possession of the rental unit.

### Conclusion

The Tenant has established a monetary claim, in the amount of \$620.24 and I grant the Tenant a monetary Order in that amount. This Order 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: July 24, 2014

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Residential Tenancy Branch

