



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), for a monetary order for money owed or compensation for damage or loss, a monetary order for a return of their security deposit, to dispute an additional rent increase and for recovery of the filing fee.

The tenant, her witness, and the landlords attended the teleconference hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to recovery of her security deposit and monetary compensation?

### Background and Evidence

The undisputed evidence of the parties is that this tenancy began on November 1, 2013, ended on February 22, 2014, monthly rent was \$950, and the tenant paid a security deposit of \$475 and a pet damage deposit of \$250 at the beginning of the tenancy.

The rental unit is in the lower suite, with the landlords residing in the upper suite.

The tenant submitted that she gave the landlords her written forwarding address on February 22, 2014, the last day of the tenancy on a separate piece of paper. The landlords have returned the amount of \$349.21 from the deposits, on March 12, 2014.

The tenant's monetary claim is \$2280.64, comprised of \$1800 for stress due to interrupting the tenant's quiet enjoyment and \$380.64 for the "damage deposit held back".

The tenant's relevant documentary evidence included the written tenancy agreement, a move-in condition inspection report, a mutual agreement to end the tenancy by March 1, 2014, signed by the parties, a written forwarding address, a breakdown of the deductions the landlords made from the tenant's security deposit and pet damage deposit, a written summary of her claim, witness statements from the tenant's mother, father, and friend attesting to the events as given by the tenant, and evidence of a report being made to the local police.

#### *Tenant's evidence in support of her application-*

The tenant submitted that she was leaving for an out-of-town visit the week of January 22-29, and as a result, asked a friend to house and pet sit for her.

The tenant submitted that on January 19<sup>th</sup>, in preparation for house sitting, her friend came into the rental unit with a suitcase. The tenant submitted that she tried to approach the male landlord to tell him of the arrangement, but that he brushed past her.

The next day, according to the tenant, the landlord approached the tenant and informed her that the rental unit was not for "community housing" for her friends to come over and do laundry. The landlord then told the tenant she was not allowed this arrangement, but relented. The tenant asked if she could bring her friend upstairs to meet the landlords and he agreed.

The landlords, instead of waiting for the tenant to bring her friend upstairs, came downstairs to the mudroom, smelling of alcohol, and the male landlord began yelling and uttering obscenities at the tenant and her friend, according to the tenant. The tenant stated that the female landlord instructed her husband to go upstairs.

Thereafter, the situation escalated, as the landlord proceeded to tell the tenant that her guest could not stay, but relented when the tenant's friend brought out the tenancy agreement. The tenant submitted that the landlord began bringing up other tenancy related issues, and the landlord threatened the tenant with an eviction. The tenant submitted that her friend left that night, as she did not feel safe with the landlords there due to their alcohol use and verbal abuse. The tenant referred to her witness statement.

The friend brought the tenant's dog to her house to dog sit.

According to the tenant, when she returned to rental unit on January 30, there was a note from the landlord to come and sign a letter so that the original 6 month tenancy would be broken.

The tenant submitted that the landlords' behaviour caused her to fear for her safety, and therefore to stay with her mother. During the first to mid part of February, the tenant and her mother began moving the tenant out of the rental unit and cleaning the rental unit.

On February 20, according to the tenant, the landlords attended the office of the tenant's father, a notary public, smelling of alcohol, and told the tenant's father the tenant would have to move out by February 20, as he had a new tenant moving in.

According to the tenant, the landlords caused a scene at her father's office, threatening physical violence to the tenant's father.

Due to the landlords' behaviour, the tenant did not feel safe anymore, and she escalated her move out of the rental unit, leaving on February 22.

Due to the landlords' behaviour as described above, the tenant submitted that she lost her quiet enjoyment of the rental unit for the final two months of the tenancy, and therefore she was entitled to monetary compensation.

*Landlords' response to the tenant's application-*

The landlords submitted that the tenant approached them on January 1, and informed them she was leaving at the end of January, which led the landlords to seek a further discussion. According to the landlords, the tenant then changed her mind about moving out, which presented a hardship to the landlords as they had already begun the process of finding another tenant. The landlords submitted that the date of the tenant's moving, March 1, was by mutual agreement.

According to the landlords, they continued to make inquiries of the tenant as to her exact move-out date, which was the purpose of the visit to the office of the tenant's father. The landlords submitted that the tenant's father admitted that the tenant had changed her move-out date several times, but that they came to an agreement that February 22 was the final move-out date.

The landlords submitted that a police officer did attend the rental unit after that visit, and asked the female landlord to ask the male landlord to refrain from visiting the office of the tenant's father.

As to the issue surrounding the house and dog sitting by the tenant's friend, the landlords submitted that they were aware the tenant could have a friend over, but that another dog, such as the friend's dog, was not allowed. The landlords submitted that they went to the shared laundry facility to find out what was happening with the friend staying in the rental unit, at which time they informed the tenant and her friend that the friend could not stay with her dog.

In response to my question, the female landlord did not deny that the male landlord had consumed some alcohol.

The landlords' relevant documentary evidence included a written response to the tenant's application.

Analysis

*Loss of quiet enjoyment-*

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Additionally the arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises.

In the case before me, I find the tenant presented consistent and credible evidence that the landlords did interfere with the tenant's right to quiet enjoyment when they began questioning the tenant about her plans to be away from the rental unit, having a friend to house and pet sit. I accept the tenant's evidence that the landlords confronted the tenant about her plans in an aggressive manner and began making demands. I find a reasonable response from the landlord would have been to seek remedy through dispute resolution to ensure that the tenant had in fact violated the Act, which I do not find to be the case here as I have accepted that the landlord confronted the tenant.

In addition to the tenant's clear and consistent evidence, I also relied on the landlord's confirmation that the male landlord had been consuming alcohol, and I find their actions would cause a reasonable person apprehension for their safety.

I therefore find that the landlords failed to provide the tenant with her right to quiet enjoyment when the landlords confronted the tenant during the tenancy.

With respect to the tenant's request for monetary compensation for a loss of her quiet enjoyment and a subsequent devaluation of their tenancy, as I have found that the landlord's actions have led to the tenant's loss of quiet enjoyment, I find it reasonable that the tenant is entitled to compensation for a devaluation of this tenancy.

I find a reasonable amount of compensation for that devaluation from apprehension from the landlords' actions to be \$300 per month, for incident in January.

I have not awarded the tenant monetary compensation for the month of February, as I cannot find that the tenant was otherwise denied the use of the rental unit or that there was other interference from the landlords, and I was not able to determine from the disputed testimony as to the date the parties agreed the tenancy would end.

I therefore find the tenant has proven a monetary claim of \$300 for a loss in the value of the tenancy for the month of January 2014, as described above.

I have not awarded the tenant monetary compensation for any incidents which may have occurred off premises, as those matters on private property are not within the jurisdiction of the Act.

*Return of security deposit and pet damage deposit-*

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy if the tenant's right to the security deposit have not been extinguished. There was no evidence that the tenant's right to the security deposit and pet damage deposit had been extinguished.

In the case before me, the tenancy ended on February 22, 2014, and the landlords confirmed receiving the tenant's written forwarding address no later than early March 2014. That forwarding address was the address used by the landlords to return a portion of the tenant's security deposit and pet damage deposit.

Therefore the landlord had until no later than February 20, 2014, to file an application for dispute resolution claiming against the tenant's security deposit and pet damage deposit or to return the security deposit and pet damage deposit in full; however, the landlords chose to return a portion of the two deposits and not to file an application for dispute resolution claiming against the security deposit and pet damage deposit.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit and pet damage deposit.

I therefore grant the tenant's application for a return of her security deposit and pet damage deposit and I order that they must be doubled. I therefore find the tenant is entitled to a monetary award of \$1100.79, comprised of her security deposit of \$475, doubled to \$950, and her pet damage deposit of \$250, doubled to \$500, less the amount of \$349.21, which was previously returned to the tenant.

As I have found merit with the tenant's application, I award her recovery of the filing fee paid for this application of \$50, pursuant to section 72 of the *Act*.

Due to the above, I find the tenant is entitled to a monetary award of \$1450.79, comprised of \$300, for a devaluation of the tenancy through a loss of her quiet enjoyment, \$1100.79 for the tenant's security deposit and pet damage deposit, which were doubled, less the amount previously returned as described above, and recovery of the \$50 filing fee paid for this application.

### Conclusion

The tenant's application was granted in part and I have granted her a monetary award of \$1450.79.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the *Act* for the amount of \$1450.79, which I have enclosed with the tenant's Decision.

Should the landlords fail to pay the tenant this amount without delay, the order must be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

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* and is being mailed to both the applicant and the respondents.

Dated: July 7, 2014

---

Residential Tenancy Branch



