



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, AAT, LAT, RR

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order allowing access for the Tenant’s guests – Section 70;
3. An Order allowing the Tenant to change locks – Section 70; and
4. An Order for a rent reduction – Section 65.

### Preliminary Matter

At the first hearing both Parties appeared and were given full opportunity to be heard, to present evidence and to make submissions under oath. All of the Tenant’s evidence on its claims with the exception of the claims set out under item 4 of the “Claim Details” were heard at the first hearing with the Landlord providing responses. Given the lack of time the hearing was then adjourned by consent in order to hear the Party’s evidence on the remaining claims.

The Landlord did not appear at the adjourned hearing despite the Residential Tenancy Branch sending the notice of adjourned hearing date to the Landlord. The Tenant states that he also confirmed with the Landlord’s manager on the evening of August 18, 2014 that the Landlord was aware of today’s hearing. The Landlord did not participate in the reconvened hearing. The Tenant was again given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to having guests access the unit?

Is the Tenant entitled to change the locks?

Is the Tenant entitled to a rent reduction?

Background and Evidence

The tenancy started in August 2012. Rent of \$425.00 is payable monthly.

The Tenant states that on December 22, 2014 another tenant assaulted the Tenant and that this person was charged and released on conditions that the tenant stays away from the Tenant and the third floor of the building where the Tenant resides. The Tenant submits that although Landlord was informed of the charge the Landlord hired this person to work at the building and that as a result the Tenant was further subjected to threats. The Tenant submits that this tenant was subsequently charged with breaching the no contact conditions and with uttering threats from incidents that occurred in the building on January 4 and 13, 2014. The Tenant states that despite a written request that the tenant be evicted the Landlord did nothing. The Tenant states that the previous manager told the Tenant that the Landlord refused to evict this tenant. The Tenant submits that the no contact order was subsequently broadened resulting in the tenant moving out of the building in February 2014 and that the Landlord did nothing to assist with this outcome. The Tenant states that he was virtually confined to his room during this period and lost opportunities to pursue employment. The Tenant states that he has made an application for benefits through the Crime Victims Program and that he has also lost opportunities to find work while taking counselling. The Tenant claims damages including aggravating damages, counselling costs and loss of ability to in pursue employment in the combined amount of \$12,200.00.

The Landlord states that he did not know the tenant, did not know about the assault and that the tenant was never an employee. The Landlord states that if anyone hired the tenant only the subcontractor could have. The Landlord states that he cannot evict

anyone and that if a person wants to help “how can I say no?” The Landlord states that this tenant has now left the building.

The Tenant states that the Landlord entered his unit without permission on February 7, 2014 to install a door closure. The Tenant states that notices of attendance had been posted but not for the day the Landlord walked in and failed to leave after being asked to do so. The Tenant states that the Landlord also entered the unit without notice on March 6, 2014 and replaced a faucet after the Tenant had requested a repair. The Tenant states that he knew of other entries into other units without permission or knowledge and that as a result he needed to be stringent about entries. The Tenant states that he also had to be present when the Landlord was in his unit as he has seen the Landlord removed other tenants’ belongings while they were out of their units. The Tenant states that as a result of having to be present at the unit the Tenant lost time to carry out volunteer advocacy work and claims \$520.00. the Tenant submits that the Landlord enters other units without right and requests an order to change the locks of the unit.

The Landlord states that they only enter units after giving notices that provide 24 hours notice that repairs would be made during a one week period. The Landlord denies entering other units without right. The Landlord states that sometime a door is open and the Landlord can enter for repairs. The Landlord states that they have a policy of checking on tenants due to their increased risk of harm and that nobody has ever claimed theft by the Landlord or staff.

The Tenant states that in a previous decision the Landlord was order to remove a sign charging guest fees but did not do so and as a result visitors have been scared off. The Tenant states that he used to have guests twice a week. The Tenant states that the Landlord arbitrarily disallows guests and asks for \$20.00 for visiting. The Tenant states that on May 27, 2014 the Landlord restricted the Tenant’s visitor while they were in the lobby. The Tenant claims \$850.00 in compensation for the Landlord’s restrict of guests.

The Landlord states that the sign was removed on April 25, 2014. The Landlord agrees that on May 27, 2014 the Tenant was told to take his visitor outside as they were not being quiet. The Landlord states that the Tenant then assaulted him. The Landlord states that he has a right to determine who may or may not enter the building and that there is a policy that restricts anyone with a background of drugs or violence. The Landlord states that the Tenant's visitor is noisy, visits about 4 times a week and that other tenants have complained about this visitor.

The Tenant submits that since becoming the owner in January 2013 pre-existing staff were fired and that the building has seen 5 different managers until March 2014 when the latest manager started. The Tenant states that since taking over the building the services, facilities, safety and cleanliness have been reduced significantly. The Tenant states that the Landlord fails to remove garbage from the hallways for up to 5 days at a time and that this occurs twice a month. The Tenant submits that the unit is overwhelmed with roaches and mice. The Tenant states that the exterior wall of his unit has bricks falling off and caused moisture to come into the unit which adds to the comfort of the cockroaches and the sound of bricks crashing startle the Tenant. The Tenant states that the City of Vancouver has been involved to order the Landlord to undertake an engineering study to determine a repair plan. At the onset of the tenancy the electricity was fine. In June 2013 the wattage was reduced to the unit resulting in having to use an extension cord from the hall. The system only allows the computer and fridge to operate and additional electrical usage by, for example, a kettle, will blow a fuse. The Tenant claims \$1,700.00 for both reduction of services and reduced use of electricity based on a loss of \$100.00 per month for 17 months.

The Tenant claims \$42.40 for copying costs from the City.

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy

agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Aggravated damages are awarded where compensation is necessary to take into account distress and humiliation or other serious injury and not to penalize the offending party.

I accept the Tenant's credible evidence that another tenant acted criminally towards him, however there is no authority under the Act to consider losses that arise from the acts of another tenant. As such I dismiss the Tenant's claims to counseling costs or costs related to attending the counseling.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act. Given the Landlord's rather thin response to the presence or acts of the other tenant and considering the Tenant's credible evidence of the Landlord's management, staff being both informed and involved in the situation involving the other tenant, I find that the Tenant has substantiated on a balance of probabilities that the Landlord failed to act following the first incident in December 2012. I also find that the Landlord's failure to act contributed to the Tenant being at significant risk of harm and contributed to the Tenant's distress. I accept that the Tenant was virtually restricted to his unit for approximately two months as a result of the Landlord's contribution to the situation. The Tenant has not however provided any evidence of any financial loss in relation to job hunting. I find therefore that the Tenant is entitled to **\$425.00** for loss of quiet enjoyment and a nominal amount of **\$300.00** in aggravated damages for the Landlord's contribution to the Tenant's distress.

As the Tenant provided no evidence of any financial loss in relation to his inability to carry out volunteer work due to having to remain at the unit for inspections, I dismiss the

claim for \$520.00. Although the Tenant has sought an order to change the locks, the Tenant made no oral submissions on this point and provided no supporting evidence to show entries into other units. Given the Landlord's evidence of posting notices in relation to the Tenant's unit, I accept that the Tenant's unit was entered in accordance with the Act. Given the Landlord's evidence that no units are entered without right I decline to make an order in relation to the unit locks.

Section 30 of the Act provides that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by the tenant. Although the Tenant provides evidence of guests being denied entry or being charged a fee, the Tenant provided evidence of only one of the Tenant's guest being denied entry. There is no authority under the Act to consider claims by a tenant on behalf of other tenants and I therefore restrict the Tenants claim to breaches by the Landlord solely in relation to the Tenant's guests. Although there is no dispute that a guest of the Tenant was denied entry given that the Tenant did not dispute that the guest was being noisy and disruptive or was the subject of complaints by other tenants, I find that the Tenant has not substantiated that the Landlord acted unreasonably in the circumstances. As the Tenant has not shown that any other of the Tenant's guests were denied entry or were required to pay a fee, I find that the Tenant has not substantiated any loss and I dismiss the claim for \$850.00. As there is no other evidence that the Tenant's guests have been restricted I decline to make any order in relation to guests other than to direct the Landlord to comply with the Act in relation to guests.

Section 65 of the Act provides that where a landlord has not complied with the tenancy agreement, an order may be made that rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. Based on the Tenant's undisputed evidence of the reduction of services and electricity to the rental unit and considering that the Tenant must now share his unit with rodents and bugs, I find that the Tenant has substantiated a reduction in the value of the unit as claimed in the amount of **\$1,700.00**.

As the Act does not provide for costs related to the dispute process other than the filing fee, I dismiss the Tenant's claim for copying costs. As the Tenant provided no monetary details in relation to its claim for a rent reduction and no oral evidence at the hearing, I dismiss this claim noting that the Landlord has an ongoing obligation to maintain a unit and the Tenant remains at liberty to pursue its rights under the Act or tenancy agreement in relation to this ongoing obligation.

The Tenant's total entitlement is \$2,425.00 for which I make a monetary order. The Tenant may reduce future rent payable by this amount in full satisfaction of the entitlement.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,425.00**. If necessary, this order may be 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: September 15, 2014

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Residential Tenancy Branch

