



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, RR

### Introduction

This was a hearing with respect to the tenant's application to cancel a two month Notice to End Tenancy for landlord's use, for a monetary award and for a rent reduction. The hearing was conducted by conference call. The tenant attended the hearing. The named landlord attended and was represented by legal counsel at the hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated July 27, 2014 be cancelled?  
Is the tenant entitled to a monetary award and if so, in what amount?  
Is the tenant entitled to a rent reduction?

### Background and Evidence

The rental unit is a basement suite in the landlord's house in Vancouver. The landlords live in the upper portion of the house and there are two rental units, both are tenanted. The tenancy began in August, 2010. There is no written tenancy agreement. The tenant paid monthly rent of \$560.00 until November 1, 2013 when she commenced to pay \$590.00 per month pursuant to a Notice of Rent Increase given by the landlord. The rent increase exceeded the amount allowed under the *Residential Tenancy Act* and Regulation.

The landlords gave the tenant a second Notice of Rent Increase dated June 30, 2014 to notify the tenant of a rent increase of \$13.00 per month to take effect on November 1, 2014. The tenant wrote a letter objecting to the rent increase and complaining about other matters. On July 27, 2014 the landlord served the tenant with a two month Notice to End Tenancy for landlord's use. On August 11, 2014 the tenant applied for dispute resolution for an order cancelling the Notice to End Tenancy. She applied as well for a

monetary award and for a rent reduction. The tenant has submitted that the Notice to End Tenancy was given in bad faith and should be set aside.

The landlords provided testimony as well as written statements and affidavit evidence with respect to the tenancy and the Notice to End Tenancy.

The landlord testified that her two adult sons who attend university live in the rental unit. The landlord said that she requires the rental unit for the use of their sons. The landlords stated their reasons for the Notice to End Tenancy as follows:

We frequently have out of town guests staying at our house, and when this occurs, the guests stay in our children's bedrooms and our two boys are forced to sleep on the floor in our bedroom.

As our two boys are now aged 20 and 22 and in university, this causes many fights whenever they are forced to give up their rooms to guests.

We also do not have space for our boys to have friends over and socialize other than in our living room, which is disruptive and noisy for us.

The landlords submitted an affidavit from one of their sons wherein he said in part that:

For many years, our parents have told my brother and I that they would reclaim the unit for my brother and me. Due to our recent arguments, they decided to reclaim the Unit for this school year, I am grateful for their decision.

It is my intent to move into the Unit when it becomes available, unless it is decided by my family that my brother (name) should move into the Unit instead.

The tenant has submitted that the landlords are acting in bad faith and the landlords' intentions in giving the Notice to End Tenancy are not genuine. She submitted that this bad faith is evident because the landlord served her with a Notice of Rent Increase dated June 30<sup>th</sup> to take effect on November 1<sup>st</sup> and then, after the tenant complained about the increase and other issues, served her with the Notice to End Tenancy less than a month later.

In her application the tenant has also claimed for a refund of overpaid rent from November 1, 2013 to August 31, 2014. The tenant calculated the overpayment to amount to \$87.20 by deducting the amount that the landlord could lawfully have charged from the amount actually charged and paid by the tenant.

The tenant claimed payment of the sum of \$490.00 because she said that cable television services were included in her rent and the landlord reduced the provided service starting in July 2013. She claimed payment of the sum of \$490.00 as the cost differential between the service that should have been provided and that which was actually provided. The tenant said that the landlord reduced the cable service provided when the cable company switched to digital service. She claimed for the difference in cost between the basic service that the landlord continued to provide and the cost to obtain the premium service that had been provided up to July, 2013.

The tenant also claimed that the landlords deprived her of heat in the rental unit. She said the heating system or the thermostat in the unit did not function. She said that despite many complaints to the landlord that it was cold in the rental unit, the landlord did nothing to fix the problem. She discovered that the landlord had glued a plastic "Lego" block inside the thermostat cover to prevent the temperature from being turned up beyond 20 degrees Celsius, but even when she removed the cover and turned the thermostat full on, the tenant said that no heat was supplied to the rental unit. The tenant said that she suffered from bronchitis due to the cold. Heat was finally restored in November, 2013 when the landlord performed some kind of repair. She claimed payment of sum of \$480.00 because she was not supplied with heat for 40 months and she claimed payment of the sum of \$64.89 for prescription medications to treat her bronchitis.

The tenant complained that the landlord was interfering with her right to personal privacy. She said that the landlord was reporting conversations and communications to the tenant's grandmother without her consent. She also objected to a surveillance camera mounted outside the door to the rental unit. She said the camera was pointed at her entrance and amounted to an invasion of her privacy. The tenant said that the angle of the camera was changed to be less objectionable after she complained to the landlord.

The landlord said that she has known the tenant personally for years before she became their tenant. The tenancy is month to month and there is no written tenancy agreement. The landlords said that they offered the tenant the use of any services that they themselves had and this included cable. They said that she was treated like family and that the landlords would not have wanted her to live in discomfort; they denied ever intentionally depriving her of heat and said they had no intention of violating her privacy.

The landlords confirmed that they gave the tenant a \$30.00 rent increase effective November 1, 201 and they acknowledged that the increase exceeded the amount permitted under the *Residential Tenancy Act*.

The landlords said that before 2013 they paid for full cable which was provided to everyone in the rental property, including the tenant. In 2013 the cable provider, Shaw changed its cable packages and performed digital upgrades. The landlord informed the tenant of the impending changes. The landlord considered switching to another provider, but chose to stay with Shaw. From April 2013 to September 2013 the landlord received basic cable, with fewer channels than were previously available. They provided the tenant with the same service as they had themselves. There was enlarged service available due to a promotion from September 2013 to April 2014 and then it reverted to basic cable. The tenant was always free to obtain her own cable box if she wished to do so. The landlord considered cable to be a gratuitous benefit extended to the tenant, rather than a service included in the rent.

With respect to the complaint about a lack of heat, the landlords said that the house has a radiant heating system and the tenant has a separate thermostat for her unit. The landlord said that the tenant made only one comment about the heat prior to 2013. The landlord said that if the tenant's unit was unheated for three years as she contends, then the likelihood was that the water pipes would have frozen; this never happened. The landlord looked at the heating system in the winter of 2013 when the tenant said the heat was not working. The landlord found the cover removed from the thermostat and the heat turned down. The landlord said that they instructed the tenant to turn the dial the other way. They performed no service to the heating system and the tenant has had an adequate supply of heat since then. The landlord said that Lego blocks were inserted in all the thermostats throughout the house because the landlords' children, when small, would play with the thermostats and the block prevented the heat from being adjusted too high.

According to the landlord there has been no significant change in heating costs over the duration of the tenancy. The landlords submitted copies of their gas bills as evidence of their heating costs.

The landlords said that the Notice to End Tenancy was not given in bad faith; it is based on a genuine intention by the landlords to occupy the space for their own use and to fulfill a commitment to their sons. They said that they gave the Notice of Rent Increase before they put their minds to the need for additional space for their sons before the new school year commenced and it should not be construed as an indicator of bad faith.

### Analysis

Despite the timing of the rent increase given by the landlords, I am satisfied on the evidence presented, that the landlords do intend to have the rental unit occupied by a one of their sons. I therefore find that the Notice should not be cancelled and I dismiss the tenant's application to cancel the Notice to End Tenancy without leave to reapply. The effective date of the Notice to End Tenancy was September 30, 2014. The landlord has acknowledged that the tenant is entitled to receive one month free of rent. If the tenant has paid rent for the month then the landlord must reimburse the rent payment for the month.

The tenant has applied the return of the overpayment of rent paid pursuant to the Notice of Rent Increase that was effective November 1, 2013. The landlord has suggested that the overpayment comes to the sum of \$87.20. I do not accept that calculation. The increase itself was invalid and therefore a nullity. The tenant is entitled to recover the entire amount of the increased rent paid pursuant to the Notice. For the 11 month period from November 1, 2013 to and including September, 2014 this amounts to the sum of \$330.00. I award the tenant the said sum as a refund of the amounts paid pursuant to the illegal rent increase.

I do not allow the tenant's claim for compensation for a lack of heat. The tenant made no written request to the landlord concerning a lack of heat and I find that when she made a verbal complaint in November 2013. The thermostat was inspected and found to be working. I find that the tenant has not established on a balance of probabilities that she suffered a lack of heat for the period before November, 2013. This claim is denied. The tenant has not established that her bronchitis condition was related to or caused by some fault or failure of the landlord and this claim is also denied.

There is no written tenancy agreement. The landlord's position with respect to cable is that the tenant was given the same cable service as the landlord received from the cable company, but it was not a service that was included in the rent or that the landlord was contractually obliged to provide. It is my finding that at most, the landlords agreed to allow the tenant to use whatever level of cable service they provided for themselves and I find that the change in service by Shaw did not oblige the landlord to sign up for additional or different cable services to accommodate the tenant's wishes; they continued to extend to her the services they had for themselves and I find that this is all that they were obliged to do. The tenant's claim for compensation for a reduction in her cable services is dismissed without leave to reapply.

The tenant complained that the landlord has interfered with her right to privacy, but she did not seek a specific remedy related to this. Because the tenancy has ended, I find that it is not necessary to address the tenant's privacy concerns in this decision. As well, because the tenancy has ended, the application for a rent reduction is also dismissed without leave to reapply.

### Conclusion

I have dismissed the tenant's application to cancel the Notice to End Tenancy dated July 27, 2014. The tenancy has ended pursuant to the Notice to End Tenancy. The landlords did not apply for or request this issuance of an order for possession. If the tenant does not move out of the rental unit pursuant to the Notice to End Tenancy, it will be up to the landlord to apply for an order for possession.

I have awarded the tenant the sum of \$330.00 as a refund of amounts paid pursuant to an unlawful rent increase; her other monetary claims have been dismissed. The tenant did not pay a filing fee for her application and I do not award any amount on that account. I grant the tenant an order under section 67 in the amount of \$330.00. This order may be registered 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 31, 2014

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Residential Tenancy Branch

