



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD; MNDC

### **Introduction**

This is the Tenant's application, filed April 9, 2014, for compensation for damage or loss under the Act, regulation or tenancy agreement. On July 22, 2014, the Tenant amended his application to request return of the security deposit and to provide a new address for service of documents.

This matter was scheduled to be heard on July 31, 2014. There were issues with respect to service of documents and the matter was adjourned to October 24, 2014, in order to allow the Landlord to pick up the Tenant's amended application and documentary evidence. An Interim Decision was made on August 22, 2014, which should be read in conjunction with this Decision.

The parties gave affirmed testimony at the Hearings. The Landlord's witness also gave affirmed testimony.

The Tenant provided evidence to the Residential Tenancy Branch on October 10, 2014. This evidence was not considered as the Hearing had already begun (on July 31, 2014) and I had not made an order allowing either party to provide additional evidence.

The Tenant acknowledged receipt of the Landlord's documentary evidence.

At the commencement of the Hearing on July 31, 2014, the Landlord denied being served with the Tenant's documents.

The Landlord stated that she went to the Residential Tenancy Branch to pick up copies of the Tenant's evidence package and was told that they would not make copies and that the Tenant's evidence was inadmissible. There is no indication in the Residential Tenancy Branch's electronic filing system that the Landlord made a request for materials, or that the Residential Tenancy Branch had advised her that the Tenant's documents were inadmissible. I find it stretches credibility that an information officer would make such a statement.

The Residential Tenancy Branch's electronic filing system indicates that the Landlord was present at the Residential Tenancy Branch on October 23, 2014, and that she advised staff that she had not received any information with respect to when the reconvened Hearing would take place. The notes indicate that the information officer gave her the sign-in access code for the

adjourned Hearing and advised her that it was on October 24, 2014. There is also a note on the electronic filing system indicating that the Branch mailed out the Notice of Adjourned Hearing to both parties on August 28, 2014.

I do not find the Landlord's testimony that she did not receive the Tenant's documents to be credible and I find it most probable, given the above set of circumstances, that the Landlord has received the Tenant's documentary evidence.

### **Issues to be Decided**

- Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?
- Is the Tenant entitled to return of the security deposit?

### **Background and Evidence**

The parties referred to a previous Hearing with respect to this tenancy on March 19, 2014 (the "Previous Hearing"). The Previous Hearing was a cross application. The Tenant had applied to cancel a One Month Notice to End Tenancy for unpaid rent; an Order that the Landlord comply with the Act; that the Landlord provide services or facilities required by law; that the Landlord's right to enter the rental unit be suspended or that conditions be set for the Landlord to enter the rental unit. The Landlord had applied for an Order of Possession for Unpaid Rent; a Monetary Order for unpaid rent and damages; to retain the security deposit; and compensation for damage or loss under the Act.

A decision on the Previous Hearing was made on March 21, 2014. The Tenant's monetary claim was not considered, because he had not duly served the Landlord with an amended Application. The Tenant was given leave to reapply. The Tenant's request for other Orders was dismissed with leave to reapply because they were not sufficiently related to the main issue which was to cancel Notices to End Tenancy. The Landlord's monetary claim was also refused because the Landlord did not provide a detailed calculation of her claim. The Landlord was also given leave to reapply for this portion of her claim. The Previous Hearing continued with respect to whether or not an Order of Possession should be granted to the Landlord. The Landlord's application for an Order of Possession was dismissed. The Landlord was made aware of the provisions of Section 28 of the Act (protection of the tenant's right to quiet enjoyment).

The Tenant responded to an advertisement for a room rental in the basement of the Landlord's home, which provided "shared common areas with 2 other students". The Landlord resided upstairs. There is dispute between the parties with respect to whether or not the Landlord should also have access to the common areas in the rental property, which include a kitchen, living area and bathroom.

This tenancy commenced in August, 2013. Rent is due on the first day of each month. The Tenant paid a security deposit in the amount of \$225.00 at the beginning of the tenancy. There was no written tenancy agreement. The Tenant moved out of the rental unit at the end of May, 2014.

On or about September 5, 2013, there was a flood in the rental property which necessitated considerable renovations to the common areas. Renovations included work in the bathroom and living areas which rendered the Tenant's bathroom unuseable. The Tenant used the Landlord's bathroom during the renovations. The Decision of March 21, 2014 provides:

"The landlord said that the bathroom renovations have recently been completed and that by the end of March, 2014, the living room renovations will be completed. This was not disputed by the tenant."

The arbitrator's Decision of March 21, 2014, also made several other Orders, pursuant to the provisions of Section 64 of the Act, as follows:

1. Rent effective April 1, 2014 is \$380.00.
2. The tenancy is bound by the Schedule of terms set out in the Regulation.
3. Smoking is not allowed in the home.
4. The Tenant may change the lock to his room only, not to the common areas.
5. Entry to the Tenant's room must be made in accordance with the Act.

The Tenant testified that he and the Landlord had a verbal agreement that he would be compensated the equivalent of one month's rent because the Landlord wished to use the rental property for her own use. The Tenant did not pay rent for the month of May, 2014. The Landlord denied any such agreement and stated that the Tenant still owed her rent for May, 2014. A copy of a letter from the Tenant to the Landlord dated April 25, 2014, was provided in evidence. The Tenant submitted that the Landlord accepted the terms of his letter, which included free rent for the month of May, 2014. The Landlord submitted that the letter was accepted as the Tenant's notice to end tenancy only and that she did not agree that the Tenant did not have to pay rent for May, 2014. The Landlord testified that after the Tenant moved out she "decided to apply his deposit" towards unpaid rent.

The Tenant testified that he had an agreement with the Landlord with respect to her use of his internet. He stated that the parties had agreed that he would pay \$70.00 less a month in rent if the Landlord could use his internet. The Tenant testified that he was renting cable equipment and that the Landlord still has the equipment. He stated that his cable provider is seeking \$300.00 from the Tenant or return of the equipment. The Landlord testified that she returned the cable equipment to the cable provider on June 2, 2014. The Landlord provided a copy of a Bill of Lading in evidence. The Tenant stated that the Bill of Lading was not for returning the cable equipment.

The Tenant stated that some of his possessions were damaged while the renovations were taking place. He seeks compensation for a ruined suitcase, some dishes and a white board. The Tenant did not have tenant's insurance.

The Tenant testified that he was compensated for loss of use of the common areas, by a reduction in rent, but that it was only for the months of January – March, 2014. He now seeks

compensation for loss of use of the common areas for the period from September – December, 2013.

The Tenant provided a breakdown of his monetary claim in evidence. The Landlord testified that she was not provided with a copy of this evidence. The Tenant stated that he provided his evidence to the Landlord twice.

The Landlord stated that the repairs were emergency repairs. She stated that the other occupants of the rental property chose to move out in February, 2014, but that the Tenant opted to stay.

The Landlord's witness testified that he was the contractor who made the repairs at the rental property. He stated that the sewer backed up and that there was a lot of damage which took 8 months to remediate.

The Tenant seeks compensation for loss of peaceful enjoyment. He stated that the Landlord and her partner had loud screaming matches which disturbed his sleep; that the Landlord insisted that his guests showing identification to the Landlord when visiting the Tenant; that the Landlord "clawed his arm" on one occasion; that the Landlord and her partner often entered the common areas of the rental property without his knowledge or permission and harassed the Tenant. The Tenant stated that he called the police on five occasions because the Landlord would not respect his privacy and would not leave.

The Tenant seeks a monetary award, calculated as follows:

Loss of quiet enjoyment (7 months @ \$100.00)	\$700.00
Compensation for damages to dishes and white board	\$80.00
Compensation for loss of use of rental unit (September – December, 2013 @ \$295.00)	\$1,180.00
Landlord's share of cable bill for May, 2014	\$70.00
Cable equipment (set top box and modem)	\$300.00
Compensation for damage to suitcase from leak	\$50.00
Return of security deposit	\$225.00
Compensation for late return of security deposit	<u>\$225.00</u>
TOTAL	\$2,830.00

The Landlord stated that it was the Tenant who picked fights with her partner; that the Tenant made a prank call to the police while she was work, causing her stress and anxiety; that the police came several times because of the Tenant's noise; and that she was allowed to enter the common areas because it was her home and the Tenant was only renting a room.

### **Analysis**

This was a very difficult Hearing because of the animosity between the parties. In addition, there was a lot of static on the Landlord's phone and she was calling from an area where there

was much background noise. I warned the Landlord three times to move to a quiet area, but the static and noise continued. I had to shout to make myself heard by the parties and had to ask the parties to repeat themselves due to the disruptions from the Landlord's phone.

It is important to note that the Landlord's written submissions make reference to her monetary claim for damage to the rental unit, and a claim for "moral damages" in the amount of \$1,000.00. This Hearing was scheduled to consider the Tenant's Application. The Landlord has not filed an Application for Dispute Resolution, and therefore I make no findings with respect to any such claims.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant provided insufficient evidence to support his claim with respect to the dishes, white board and suit case. For example, no estimates for the cost of replacement were provided. In addition, the Tenant did not have tenant's insurance. Therefore, I find that the Tenant did not meet parts 3 and 4 of the test for damages above and this portion of his claim is dismissed.

The parties have complicated the tenancy by setting off an agreed-upon utility against rent. The Decision on the Previous Hearing made some findings with respect to rent. The Arbitrator found that rent, effective April 1, 2014, was \$380.00 instead of \$450.00 because of the set-off. I find that the Tenant is entitled to his claim for **\$70.00** for May's cable bill. Section 62 of the Act provides me with the authority to make any order necessary to give effect to the rights, obligations and prohibitions under the Act. Because of the Arbitrator's finding with respect to rent at the Previous Hearing, I find that it is necessary for me to make a finding with respect to whether or not the Tenant owes rent for the month of May, 2014.

Section 51(1) of the Act provides:

**Tenant's compensation: section 49 notice**

- 51 (1) A tenant **who receives** a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord

on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[my emphasis added]

Section 52 of the Act provides:

**Form and content of notice to end tenancy**

**52 In order to be effective**, a notice to end a tenancy must be in writing and **must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

**(e) when given by a landlord, be in the approved form.**

[my emphasis added]

In this case, I find that the Tenant did not receive a Notice to End Tenancy for Landlord's Use under Section 49, and therefore he is not entitled to compensation under Section 51 of the Act. Therefore, **I find that the Landlord was entitled to rent for the month of May, 2014, in the amount of \$450.00, which will be set off against the Tenant's monetary award.**

The parties agreed to a rent reduction commencing January, 2014, for loss of use of the rental property, in the amount of \$250.00 per month. The Tenant now seeks compensation for the months of September to December, 2013. The Landlord's witness testified that the renovations took 8 months to complete, which would include the months of September to December, 2013. I find that the Tenant is also entitled to compensation for those months and award him a total of **\$958.25** for this portion of his claim, calculated as follows:

Compensation for September 5 - 30, 2013

(\$250.00 / 30 = \$8.33 per diem x 25 days) \$208.25

Compensation for October, November, December, 2013

(\$250.00 x 3 months) \$750.00

TOTAL **\$958.25**

I find that the Tenant did not provide sufficient evidence to support his claim in the amount of \$300.00 for the cable equipment (for example, a copy of an invoice from the cable provider indicating the amount that they require the Tenant to pay). This portion of his claim is dismissed.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy and freedom from unreasonable disturbance. I find that the Landlord did not comply with the provisions in Section 28 of the Act. For example, on one occasion the Landlord and her partner entered the common area of the rental property after midnight and had a loud conversation about the state of the renovations. This woke the Tenant up, who confronted the Landlord and her partner. He asked them to leave and they refused, stating that it was the Landlord's house and she could be there if she chose. The Landlord's partner then began to scream in the Tenant's ear, berating him. The Tenant called the police and the Landlord and his partner left the common area. This is just one example of the Landlord's and her partner's behaviour towards the Tenant. I find that the Tenant suffered a loss as a result of the Landlord's actions in contravention of the Act. However, based on the amount of monthly rent, I find that the Tenant's request for \$100.00 per month is excessive. Pursuant to the provisions of Section 67 of the Act, I allow this portion of the Tenant's claim in the amount of **\$350.00**.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. In this case, I find that the Landlord did comply with Section 38(1) of the Act.

Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit ( $\$225.00 \times 2 = \textbf{\$450.00}$ ).

I hereby provide the Tenant with a Monetary Order, calculated as follows:

Compensation for Landlord's portion of the cable bill for May, 2014	\$70.00
Compensation for loss of use from September 5 – December 31, 2013	\$958.25
Compensation for loss of peaceful enjoyment	\$350.00
Compensation pursuant to Section 38(6) of the Act	<u>\$450.00</u>
Subtotal	\$1,828.25
Less unpaid rent for May, 2014	<u>-\$450.00</u>
TOTAL monetary award to Tenant after set-off	<b>\$1,378.25</b>

**Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,378.25** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: November 14, 2014

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Residential Tenancy Branch



