



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL, MNDC, RR, FF  
OPL

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for landlord's use of property / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / permission to reduce rent for repairs, services and facilities agreed upon but not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlords confirmed that an order of possession is sought in the event the tenant's application for cancellation of the notice to end tenancy does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is located in the basement portion of a house. Other renters occupy the upstairs portion of the house. The landlords reside elsewhere.

There is no written tenancy agreement in evidence for this tenancy which is understood to have begun in March 2009. The current landlords purchased the unit from the original landlord in July 2014.

Monthly rent is due and payable in advance on the first day of each month. Rent was formerly \$650.00 and included cablevision which was in the name of the original landlord. However, since the change in unit ownership, the new / current landlords required the tenant to put cablevision in her name. Related to this, the landlords have provided a rent reduction of \$50.00, however, the amount of this reduction is at issue in

dispute and is addressed further below. Neither a security deposit nor a pet damage deposit was collected.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlords issued a 2 month notice to end tenancy dated February 18, 2015. The notice was served by way of registered mail, and the tenant claims she took delivery of this from the Post Office on February 25, 2015. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is May 01, 2015, and the reason identified on the notice in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

In addition to other outcomes, on March 03, 2015 the tenant filed an application for dispute resolution, seeking to have the notice set aside.

During the hearing the female landlord testified that her intention is that both of her parents will move into the unit after such time as this tenancy may end. The female landlord testified that her parents presently reside with her sister.

### Analysis

Based on the documentary evidence and testimony of the parties, the various aspects of the application / request and my related findings are set out below.

## **LANDLORDS**

### ***Order of Possession***

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I find that the landlords served the tenant with a 2 month notice to end tenancy for landlord's use of property in accordance with the Act. I also find that the tenant filed her application to dispute the notice within the 15 day period permitted under section 49(8) of the Act.

Further, I find that the reason identified on the notice in support of its issuance reflects the good faith intent of the landlords. The tenant's application for cancellation of the notice is therefore dismissed, and in response to the oral request made by the landlords during the hearing, I hereby issue an **order of possession** in favour of the landlords.

During the hearing the parties agreed that the effective date of the order of possession will be changed from May 01, 2015, as shown on the 2 month notice, to **May 31, 2015**.

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## TENANT

*\$213.92: reimbursement of cost repair to computer following power surge*

It is understood that the upstairs renter sought access to the electrical panel following a loss of power in the upstairs unit. The electrical panel is located in the tenant's unit, and the tenant acceded to the upstairs renter's request for access. During the course of his intervention, the upstairs renter accidentally "flipped" breakers affecting the tenant's unit. There was a resulting power surge which negatively affected the tenant's computer. As a result, the tenant incurred a repair bill in the amount claimed.

The unfortunate outcome appears to have been an accident on the part of the upstairs renter. However, I find that power surges may occur for reasons that are beyond the control of either landlords or tenants, and that it is reasonable to expect tenants to mitigate potential loss by using a power bar surge protection device. I also find, however, that the landlords ought reasonably to be held partially responsible for the tenant's repair costs, as damage to her computer indirectly arose from the fact that breaker switches affecting the power supply to the upstairs rental unit are located in the electrical panel which itself is located in the tenant's basement unit. In the result, I find that the tenant has established entitlement limited to **\$75.00**.

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*\$370.00: reimbursement of cable costs*

The tenant claims that cablevision was previously included in the \$650.00 rent, and that cablevision had been in the name of the original landlord. When ownership of the property changed, the cablevision account in the original landlord's name was terminated, and a new account was opened in the tenant's name. The tenant discussed reconnection of cablevision with the new / current landlords. It appears to have been agreed that the tenant would proceed to have cablevision connected in her own name, and included in a bundle with her telephone and internet, and that the resulting cost would be deducted from the rent. The tenant claims that the monthly cost of cablevision at the level to which she had become accustomed is \$90.00, however, the landlords have agreed to a monthly reduction of rent in the limited amount of \$50.00. The tenant seeks compensation for the difference as follows:

\$90.00: August 2014 (prior to agreement that rent would be reduced by \$50.00)  
\$320.00: 8 month period from September 2014 to April 2015 x \$40.00

I find there is insufficient evidence that cablevision provided under the terms of the original tenancy agreement was at a higher level than "basic cable." I note that the invoice provided in evidence by the tenant assesses the monthly cost of "basic cable" as \$47.00. In the result, I find that the tenant has established entitlement limited to recovery of **\$50.00** for the month of August 2014, at which time no specific agreement had been reached between the parties concerning a cablevision – related reduction in rent. The tenant's application for a reduction of rent in excess of the \$50.00 agreed to between the parties for each of the subsequent months of tenancy is hereby dismissed.

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*Unspecified amount arising from miscellaneous alleged breaches of the right to quiet enjoyment*

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Matters of concern identified by the tenant in her application broadly include, but are not limited to, concerns around neighbours' barking dog; dog feces belonging to neighbours' dog; change in the nature of access to her unit following sale of the property; scheduling of shared access to laundry facilities; lighting required in relation to change in access to her unit; parking of other renters' vehicle; location of garbage cans; delivery and replacement of new fridge; remediation of water leak adjacent to the washer and dryer; and visits to the unit variously by either a plumber or electrician. I find insufficient evidence either that concerns identified are sufficient to constitute a breach of the right to quiet enjoyment, or that matters requiring the attention of the landlords have not been attended to by them in a reasonably timely manner.

The exception to the findings set out immediately above, however, concerns leaking in the bathroom shower. I note that the landlords were made aware of this problem in late October 2014, and that they prefer that full and proper repairs are undertaken after the end of this tenancy. While I am satisfied that no emergency repairs are required, and that a full and proper repair is likely to require the involvement of a plumber and perhaps other trades over several days, in the meantime I find that the leaking diminishes the value of the tenancy. Accordingly, I find that the tenant has established entitlement to compensation in the amount of **\$350.00**, which is calculated on the basis of \$50.00 per month for each of the 7 months from November 2014 to May 2015 (7 x \$50.00).

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**\$600.00: entitlement pursuant to section 51 of the Act which speaks to *Tenant's compensation: section 49 notice*.**

As rent has not yet been paid for April 2015, and as rent is due and payable in advance on the first day of each month, I hereby **ORDER** the tenant to pay April's rent forthwith.

Section 51 of the Act provides that the tenant "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." Accordingly, I hereby **ORDER** that the tenant withhold payment of all rent due for May 2015 in the amount of \$600.00.

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**\$50.00:** *filing fee*

As the tenant has achieved a measure of success with the main aspects of her application, I find she has also established entitlement to recovery of the full filing fee.

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**Total entitlement: \$525.00**

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Conclusion

I hereby issue an **order of possession** in favour of the landlords effective not later than **May 31, 2015**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$525.00**. Should it be necessary, this order may be served on the landlord, 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: April 08, 2015

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Residential Tenancy Branch

