



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associated Property Mgmt.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$15,066.63, and recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

There are two main issues to be decided here as follows:

1. The first is whether or not there was negligence on the part of the landlord that resulted in the death of numerous of the tenant's pet birds, and the resulting costs.
2. The second is whether or not the landlord complied with the reasons given in the two month Notice to End Tenancy, and if not what compensation is justified to the tenant.

### Background and Evidence

The applicant has argued that her seven cockatiels and four budgies died as a result of the landlord's failure to service the furnace in the rental unit.

The applicant further testified that in early November 2014 she had asked the landlord to service the furnace for winter and the landlord failed to do so. Then on approximately November 16 or 17th of 2014 she found all her birds dead in the bottom of the cage.

The applicant testified that at first she thought the birds had died due to a problem with the water and therefore had the water tested, however she also decided to send one of the birds to have a necropsy performed to find out why it had died.

The applicant testified that the necropsy found that the cause of death was a respiratory toxin, most likely carbon monoxide. She therefore believes that the landlord's failure to service the furnace resulted in carbon monoxide poisoning to all her birds and therefore wishes to be compensated for all the costs that resulted from this poisoning.

The applicant further testified that the furnace was tested on November 17, 2014 and it was found that there were 1 ppm of carbon monoxide and therefore she stopped using the furnace and purchased an oil heater.

The applicant also testified that she was given a two month Notice to End Tenancy for landlord use, which she did not dispute, however she does not believe that vacant possession was required for the landlord to do renovations to the rental unit, and she believes that the notice was given in retaliation, because she had requested some repairs be done at the rental unit.

The respondent stated she did not dispute the Notice to End Tenancy because she had wanted to move anyway, however she believes it was unnecessary to give the notice in the middle of winter.

The applicant further argued that she was never shown any permits to do any renovations even though she requested the landlord provide copies of those permits.

The applicant therefore argues that the landlord should have to pay her moving costs, the cost of the pool she had to leave behind because it was frozen in the ground, and the compensation required by the Residential Tenancy Act for the landlord's failure to comply with the reasons given on the Notice to End Tenancy.

The total amount that the applicant is claiming is as follows:

Cost of swimming pool	\$558.00
Avian necropsy	\$131.25
Cost of shipping bird for necropsy	\$26.23

Box for shipping bird	\$3.97
Oil heater	\$90.68
Bottled water	\$12.78
Bleach for washing dishes	\$2.00
Product for cleaning possible bird contamination	\$7.83
Cost of 7 cockatiels	\$1225.00
Cost of 4 budgies	\$87.96
Legal advice	\$184.80
Moving costs	\$664.13
Compensation for not complying with Notice to End Tenancy	\$12,072.00
Filing fee	\$100.00
Total	\$15,166.63

The respondents argued that there is insufficient evidence to show that the birds died as a result of any problem with the furnace. There are numerous things that have caused the death of the birds including smoking in the rental unit, use of incense, cooking with Teflon, room sprays, all of which would be considered a respiratory toxin.

The respondent also pointed out that 1 ppm of carbon monoxide is well within the normal range for a furnace and has provided information from work safe BC that shows that the normal range is between 1 ppm and 3 ppm.

The respondent also argued that she believes they responded reasonably quickly and resolving any issues with the furnace, and in fact the furnace was first inspected on the same day the tenant reported the death of her birds, and subsequently replaced four days later.

The respondents therefore do not believe that they should be liable for any of the costs associated with the death of the tenant's birds.

The respondents further testified that the two month Notice to End Tenancy was not given in retaliation, the notice was given because the rental unit needed substantial upgrading and since the tenant had told them that she wanted to move, they thought this would be a good time to do it, and would also allow the tenant one free month rent to assist her with her move.

The respondents further testified that vacant possession certainly was needed to do the renovations that were required in this unit, which included the following:

- Replacing all flooring in the whole house.
- Renovating the bathrooms, including removing and replacing a tub.
- Replacing all the Windows in the rental unit that had not yet been replaced.
- Upgrading the plumbing.
- Completely painting the interior of the rental unit.

The landlords further testified that there was a total of \$23,000.00 in renovations done to the rental unit and therefore they believe they completely complied with the reasons given for ending the tenancy. Had the tenant disagreed with the Notice to End Tenancy and felt it was given in bad faith she could have disputed the notice however she did not file any dispute of the Notice to End Tenancy.

The landlord further testified that, as far as the pool is concerned, the tenant told us that she did not want the pool, had she stated she wanted the pool we would have left it for her to remove once the ground had thawed.

The landlord's therefore believe that the tenant's full claim should be dismissed.

In response to the landlords testimony the tenant testified that she did not tell the landlord she did not want the pool, she simply said she would leave it for the next tenants, and she left the chemicals for the pool as well.

### Analysis

It is my finding that the applicant has not met the burden of proving that the death of her birds was the result of any negligence on the part of the landlords. The report from the test on the birds does state that it was likely a respiratory toxin; however it does not say what that toxin was.

Further, subsequent testing by the utility company found no carbon monoxide leak, and testing by the furnace company only found 1ppm, which is at the low end of the normal range.

Therefore there is insufficient evidence to reach a conclusion that the tenants birds died due to a carbon monoxide leak from the furnace in the rental property.

It is also my finding that the landlords did comply with the reasons given on the two month Notice to End Tenancy. The notice was given stating that the landlord would be

renovating the rental unit and that is exactly what was done. It is my finding that it was reasonable to request vacant possession of the rental unit to do the extensive renovations that were done.

Further, I am not convinced that this notice was given in retaliation for requests for repairs by the tenant.

I therefore will not allow the tenants claims for moving costs or for any compensation under the Act.

Further, since the applicant chose to leave the swimming pool behind, stating it could be given to the new tenants, she does not have a claim for compensation for that pool, even if the landlord's choose not to use it for the new tenants.

Therefore I have disallowed the tenant's full claim, and I therefore also disallow her claim for recovery of her filing fee.

#### Conclusion

This application has been dismissed in full, without leave to reapply.

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 22, 2015

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Residential Tenancy Branch

