



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC OLC FF

### Preliminary Issues

Upon review of the Tenants' application the Tenants had requested \$2,100.00 monetary compensation which they described in their details of dispute as being comprised of "1 month rent \$1400 + \$700 damage deposit".

Section 17 of the *Act* provides, in part, that a landlord may require, in accordance with this *Act* and the regulations, a tenant to pay a security deposit.

Section 2(1)(b) of the *Regulation Schedule* stipulates that a landlord may keep the security deposit and pet damage deposit **during the tenancy** and pay interest on it in accordance with the regulation.

The Tenants filed their application for Dispute Resolution on July 09, 2015 at which time this tenancy was still in full force and effect. Accordingly, I declined to hear the Tenants' request for the return of their security deposit as their application was premature and their request for the return of their security deposit was dismissed, with leave to reapply.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlords confirmed receipt of all of the evidence that had been served by the Tenants. No issues were raised regarding service or receipt of that evidence. Section 88(e) of the *Act* stipulates in part that all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this

Act to be given to or served on a person may be given or served by leaving a copy at the person's residence with an adult who apparently resides with the person.

The Landlords stated that they had submitted three packages of evidence to the Residential Tenancy Branch (RTB). The Landlords' asserted that copies of their evidence from the binder submitted to the RTB were served to the Tenants via registered mail in one envelope which was addressed to both Tenants. The Landlords argued that that registered mail envelope contained two identical packages of evidence, one for each Tenant.

The male Tenant testified that he signed receipt for one package of evidence received from the Landlords. A random review of that evidence was conducted and I was satisfied that the male Tenant had received copies of the exact same documents which were submitted into evidence at the Residential Tenancy Branch (RTB) by the Landlords in a black binder.

The female Tenant testified that she had not received or reviewed any evidence sent from the Landlords. The male Tenant submitted that they only received notice for one package and that he was the person who signed for it and reviewed it. Each Tenant acknowledged that they still resided together as a couple.

Based on the above, I find both Tenants' were sufficiently served with copies of the Landlords' first submission of evidence (the contents of the black binder on the RTB file) in accordance with section 88(e) of the *Act*. I made this conclusion as the documents were received by the male Tenant who is an adult who resides with the female Tenant. Accordingly, I considered that evidence submitted by the Landlords and which were received by the RTB in a black binder.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

The Landlords testified that the two other packages of evidence submitted to the RTB on August 27, 2015 and September 02, 2015, were not served upon the Tenants. Therefore, the Tenants were not served with copies of that evidence as required by Rule of Procedure 3.15. Accordingly, I did not consider the Landlords' last two submissions of evidence as

they were not served upon the Tenants prior to this hearing. I did however consider all relevant oral submissions from each person.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation in accordance with the *Act*?

### Background and Evidence

The undisputed evidence was the parties entered into a verbal month to month tenancy agreement which began on February 15, 2015. Rent was payable on the first of each month in the amount of \$1,400.00 and sometime near the beginning of February 2015 the Tenants paid \$700.00 as the security deposit. The Tenants vacated the property as of August 31, 2015 and returned the keys to the Landlords the evening of September 1, 2015.

The rental unit was described as being the upper level of a four plex. Upon further clarification the building was a duplex and each side of the duplex consisted up an upper level and a lower level. The Tenants resided in the upper level on one side of the duplex and the Landlords reside in the upper level on the other side of the duplex. Both lower levels were occupied by other tenants under separate tenancy agreements.

The Tenants testified that they sought compensation of \$1,400.00 which is an amount equal to one month's rent for having to move out of their rental unit. They argued that the Landlords came to them in April 2015 and told them they would have to move because the Landlords' were planning to have their family member move into the rental unit.

The Tenants submitted that their relationship with their Landlords broke down and became hostile after they informed the Landlords that they had to be issued a proper written eviction notice and that they were entitled to compensation equal to one month's rent.

The Tenants asserted that they had no problems with any of the other tenants until after they began to educate the Landlords on their entitlement to compensation. Upon further clarification the Tenants confirmed that their application for compensation was comprised of the following: being told they had to move out because the Landlords' family was moving in; then after requesting proper notice and compensation the Landlords changed their mind and said their family was not moving in; having to deal with the hostile environment created by the other tenants which caused a loss of quiet enjoyment; and for wrongfully being forced out.

The Tenants testified that they had no problems with the other tenants until they requested compensation from their Landlords. They pointed to an April 30, 2015 email submitted in the Landlords' evidence at tab 2 page 4 which spoke about their request for an eviction notice and for things to be done legally.

In support of their application the Tenants submitted, amongst other things, copies of the following: 3 letters issued to the Landlords titled Loss of Quite Enjoyment; a CD containing 2 videos; and an email string dated April 30, 2015.

The Tenants referenced their two audio recording which were submitted into evidence. They described the first audio recording as being taken by the male Tenant who testified that he did not inform the Landlord the conversation was being taped. The Tenants submitted that their second audio recording was taken by the female Tenant who had been engaging in conversation with the Landlord for approximately 5 minutes prior to getting her phone and telling him she would be recording the rest of their conversation.

The Landlords disputed the Tenants' request for monetary compensation. They confirmed that they had had discussions with the Tenants about their family member moving into the rental unit. They argued that their family member did not receive her visa so they informed the Tenants that their family member was no longer moving in and they were welcome to stay, as per their April 30, 2015 email submitted into evidence.

The Landlords stated that they did not serve the Tenants with a 2 Month Notice for landlord's use. Rather, on July 23, 2015 the Landlords served the Tenants with a 1 Month Notice to end tenancy for cause which listed an effective date of September 1, 2015.

The Landlords asserted that they began having problems with these Tenants a week or two after they moved into the rental unit. They had heard the Tenants small children crying and screaming so they attended the rental unit and knocked on the door. No one answered and they determined that the children were left home alone. The Tenants later approached them and were very upset. The Tenants told them never to knock on their door again and never to question their parenting.

The Landlords then read into evidence the first to sentences of the April 30, 2015 email submitted at tab 2 page 5 of their evidence where the Tenant wrote:

*Hi sorry I am really tired today. If you don't want us to smoke weed we won't we will walk out of the house...*

They argued the above mentioned email was also proof that they were having problems with these Tenants. Then they pointed to their letters submitted into evidence from the other tenants which spoke about their interactions with these Tenants. They argued that it was these Tenants who were creating the hostile environment for everyone else and not the Landlords as portrayed by the Tenants.

The Landlords referenced the audio recording they submitted into evidence and argued that it was proof the Tenants were the hostile aggressive people. In support of their position the Landlords also submitted documentary evidence consisting in part of: a 5 page written submission; an electronic recording on a USB stick; emails; and copies of text messages.

In closing the Landlords argued that it appeared to them that the Tenants were trying to instigate things to get money. They submitted that the Tenants later intimidate one of the other tenants who they had initially planned to use as witness. They also submitted that the tenant directly below these Tenants gave notice and is moving out because she could not take a chance that the Tenants would not leave.

The Tenants submitted that they tried to resolve this situation by informing the Landlords that proper notice was required. They said they were forced to move after the Landlords said their family member was moving in so they are entitled to the compensation equal to one month's rent.

### Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(1) of the Act stipulates **that 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 by bold text]. Section 52 of the Act provides that 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 by bolding]

Section 28 of the Act provides that 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 7(2) of the *Act* stipulates, in part, that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

**After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:**

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

In this case the Tenants were not served a 2 Month Notice to end tenancy in the approved form as required by section 52(e) of the Act. They were however, served with a 1 Month Notice to end tenancy for cause effective September 1, 2015.

Based on the above, despite the Tenants vacating the rental property on September 1, 2015, I find that the Tenants are not entitled monetary compensation equal to one month's rent pursuant to section 51(1) of the *Act*. I made this finding in part because the Tenants were never served a valid 2 Month Notice to end tenancy pursuant to section 49(3) of the *Act*.

In response to the Tenants' submissions for loss of quiet enjoyment I have given no evidentiary weight to the video and audio recordings submitted by the Tenants or the Landlords. I find these recordings to be unreliable as one party could have easily manipulated the conversations in an attempt to elicit responses that otherwise would not have been made. Especially in cases where the other party was not aware the conversation was being recorded. Furthermore, there is no way to determine if the recordings were edited prior to their submission. I did however consider the oral evidence submitted by each party of what occurred during the events in question.

I accept the undisputed evidence that the landlord and tenant relationship became adversarial and there were times both the Landlord(s) and Tenant(s) acted in a hostile manner towards each other. I further accept that the relationship between these Tenants and the other tenants in the four plex became adversarial. That being said, there is insufficient evidence to prove that only one party was at fault. Rather, there was sufficient evidence to prove that both parties acted or reacted in a hostile manner towards the other.

Furthermore, if the Tenants felt they were being forced out of their rental unit after asking for a proper notice to end tenancy, they ought to have mitigated any loss by filing an application for Dispute Resolution back in April 2015 when their tenancy started to be adversarial, as required by section 7(2) of the *Act*.

Based on the above, I conclude the Tenants submitted insufficient evidence to prove their application for compensation for damage or loss under the *Act*, regulation, or tenancy agreement. Accordingly, the Tenants' claim for \$1,400.00 is dismissed in its entirety, without leave to reapply.

The Tenants' were not successful with their application; therefore, I decline to award recovery of their filing fee.

### Conclusion

The Tenants were not successful in their application for \$1400.00 compensation and their claim was dismissed, without leave to reapply.

The Tenants' request for the return of their security deposit was dismissed, with 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 03, 2015

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Residential Tenancy Branch

