



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 PERFORMANCE REALTY & MANAGEMENT AND  
MURCAHDA ENTERPRISES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: RP RR MNDC FF

### **Introduction**

Both parties attended the hearing and the landlord agreed that the tenant /applicant personally served the Application for Dispute Resolution on them. This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) Compensation for the landlord's failure to protect their quiet enjoyment contrary to section 28;
- b) That the landlord repair and maintain the property pursuant to section 33 and compensation or a rent rebate for the landlord's failure to do so; and
- c) To recover filing fees for this application.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act and are they entitled to orders that the landlord do necessary repairs and/or compensation for lack of repair? Have they proved that the landlord through act or neglect failed to protect their quiet enjoyment? If so, to how much compensation have they proved entitlement?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in April 2014, rent is \$900 a month and a security deposit and pet damage deposit totalling \$900 was paid. Both parties agreed that the tenants vacated at the end of October 2015 and their security and pet damage deposits were dealt with.

The tenants claim \$1800 in compensation for the landlord's failure to protect their quiet enjoyment and failure to repair. They explained this represents \$100 a month for each month they lived in the unit. They said they first complained of the broken fence in March 2015 and it was still broken when they left. They explained there are two fences, a common area one which had a hole for months as shown in the photograph taken

May 17, 2015 and their own fence which had rusty protruding nails since spring of 2015 although the photograph was taken July 20, 2015. The landlord said they had no complaint regarding the common area fence and the tenant said that another tenant had fixed it from time to time. In respect to the fence with the rusty nails, the landlord provided a time line of contacting the contractor on July 20, 2015 after the tenant reported it by email. They received approval from the owner to proceed with the repair on August 5, 2015 and emailed the contractor. The tenant advised they were withholding rent for September 2015 on September 8, 2015 because the fence had not been fixed and the contractor went that day and fixed it. The landlord had assumed it was done when they authorized the contractor to do it and the tenant did not advise them he had not done it.

The tenants said they had very bad experiences with the tenant beside them who disturbed them constantly with loud music, possessing stolen property necessitating attendance by the police, fighting with other tenants and causing problems with illegal hydro hookups. The landlord agreed that the neighbour tenant had caused a lot of difficulty but said they had to observe the provisions of the Act to evict the tenant. They provided a timeline of events in evidence. On March 28, 2015, this tenant complained, on March 30, 2015 and the landlord posted a caution notice to the offender and notified this tenant. On April 16, 2015, the tenant complained of a fight over hydro and the landlord posted a Warning letter concerning loud music and hydro hookup on the offender's door. On May 5, 2015, this tenant complained about a broken window and extension cords running out of the offender's premises and on May 6, 2015, the Property Manager posted a one month Notice to End Tenancy for Cause on the offender's door with a move out date of June 30, 2015. The tenant disputed the Notice and had a hearing on July 7, 2015. The landlord received an Order of Possession and served it on July 9, 2015. The landlord attended with Police regarding enforcement and was able to have the offender evicted on July 24, although they left some items behind and eventually abandoned them. Subsequently, there was a break-in to the offender's unit on August 29, 2015. The applicant tenants stopped payment on their rent on September 1, 2015 and were given a 10 day Notice to End Tenancy. They paid their rent on September 8, 2015.

Included with the evidence are statements of the parties, photographs, the Order of Possession and timeline of the landlord.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the weight of the evidence is that the applicant tenants had significant disturbance of their peaceful enjoyment in violation of section 28 of the *Act*. The issue is whether this was caused by act or neglect of the landlord. I find the evidence is that on March 28, 2015, the applicant tenant complained of the offending tenant disturbing them and on March 30, 2015 the landlord posted a caution notice to the offender and notified this tenant of their action to address the problem. On April 16, 2015, the applicant tenant complained of a fight over hydro and the landlord posted a Warning letter concerning loud music and hydro hookup on the offender's door. On May 5, 2015, the applicant tenant complained about a broken window and extension cords running out of the offender's premises and on May 6, 2015, the Property Manager posted a one month Notice to End Tenancy for Cause on the offender's door with a move out date of June 30, 2015. I find the landlord acted promptly in response to each complaint so the lack of peaceful enjoyment was not due to any act or neglect of the landlord. In accordance with section 47 of the *Act*, the landlord warned the offender of possible eviction for cause if the disturbing behaviour continued.

Once the tenant disputed the Notice, the timing of the matter was before the Residential Tenancy Branch and the hearing was on July 7, 2015. The landlord received an Order of Possession and served it on July 9, 2015. The landlord attended with Police regarding enforcement and was able to have the offender evicted on July 24. Although the evidence indicates that the offender caused much disturbance of peaceful enjoyment to the other tenants, I find insufficient evidence that this was due to any act or neglect of the landlord so the landlord is not responsible to compensate the tenant pursuant to sections 7 and 67 of the *Act*. A recent court decision emphasized that that compensation should not be awarded if no negligence is found on the part of the landlord. I find the evidence is that the landlord acted promptly to address the issue and evicted the offending tenant. In response to the tenant's query, I find no provision in the *Act* to require the landlord to do a criminal record check before accepting tenants. I dismiss this portion of their claim.

In respect to the fence repair, I find insufficient evidence that the landlord was ever notified of the repair needed to the common area fence. The tenant said that it was fixed by another tenant. However, the landlord agrees that there was a one month time lag between notification of the need for repair of the tenant's fence and the contractor attending to do it. The complaint was registered on July 20, 2015 by the landlord and the fence was not fixed until September 8, 2015. I find two weeks would have been a reasonable time to effect such a repair so I find the tenant entitled to compensation for loss of their privacy and safety (due to exposure to adjoining criminal activity) for approximately one month (August 8 –Sept 8). I award them a rebate of 10% of their rent for that month or \$90.

As the tenants have vacated, I find it irrelevant to consider or make orders for other repairs.

**Conclusion:**

I find the tenants entitled to a monetary order for \$90 compensation and to recover their filing fee of \$50 as their application had some merit. This monetary order may be filed in and enforced through the Small Claims Court of British Columbia.

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 10, 2015

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Residential Tenancy Branch

