



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC

### **Introduction**

This is the Tenant's Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement. This matter was convened on August 20, 2015. The Hearing was adjourned to allow the Landlords to re-serve the Tenant with their documentary evidence. An Interim Decision was issued on August 31, 2015, which should be read in conjunction with this Decision.

The Hearing was reconvened on November 4, 2015. Due to technical difficulties with the telephones, it was adjourned again to November 16, 2015. An Interim Decision was issued on November 6, 2015, which should be read in conjunction with this Decision.

It is important to note that the Landlords provided documentary evidence suggesting that they feel they are entitled to monetary compensation from the Tenant; however, the Landlords have not made an Application for Dispute Resolution against the Tenant. I advised the parties that the only matter to be determined is the Tenant's Application, and that the Landlords are entitled to make their own Application, if they so desire.

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

1. What amount did the Tenant pay the Landlords for a security deposit?
2. Has the Tenant established an entitlement to monetary compensation from the Landlords for breach of quiet enjoyment, pain and suffering?

### **Background and Evidence**

The rental unit is one of a number of residences on the rental property which is comprised of 52 acres and is owned by the Landlords. The Landlords also reside on the rental property.

There have been two other dispute resolution hearings with respect to this tenancy, on June 20, 2014 and September 18, 2014. Copies of the Decisions with respect to these hearings were provided in evidence.

The June 20<sup>th</sup> hearing was convened to consider the Tenant's application to dispute an additional rent increase, to cancel a Notice to End Tenancy for Landlord's Use and other Orders. The arbitrator severed the Tenant's application for other Orders, under the provisions of Rule of Procedure 2.3, and gave the Tenant leave to reapply. The arbitrator cancelled the

Notice to End Tenancy for Landlord's Use and found that the additional rent increase was not valid.

The September 18<sup>th</sup> hearing was convened to consider the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent. The arbitrator found that the tenancy had ended "at the end of July, 2014", and therefore the Tenant's application was "rendered moot".

On November 4, 2015, the parties provided the following testimony with respect to the tenancy:

- A copy of the tenancy agreement was provided in evidence. The Tenant stated that it is not her signature on the tenancy agreement.
- The parties agreed that the tenancy began on April 1, 2012, and ended on July 31, 2014.
- The parties agreed that rent was \$550.00, due on the first day of each month. Rent included power and heat.
- The Tenant testified that she paid a security deposit in the amount of \$275.00 at the beginning of the tenancy. The Landlords disputed the amount paid, saying that she only paid \$250.00. The Landlords have retained the security deposit.

The Tenant's testimony:

The Tenant testified that the Landlords refused to make repairs to the rental unit. For example, they did not fix the septic system, plumbing and heating. She stated that the rental unit had no insulation or screens. The Tenant testified that water leaked from the fan and the fridge did not operate properly.

The Tenant stated that the male Landlord asked her to be a witness for him at a hearing involving another of his tenants, and that he "got mad because I refused to lie". She stated that because of this, the Landlord made her life "a living hell". The Tenant alleged that the Landlord tampered with her mail; killed her dog; harassed her guests; made sexual remarks towards her; sexually assaulted her; kidnapped her grandchildren; moved her car without permission, puncturing her gas tank; and sabotaged her garage sale. The Tenant testified that the Landlord was in her yard every day, without notice, and that he broke her TV satellite, disconnected her phone, and put up a fence which limited her use of the yard. The Tenant stated that the Landlord also deliberately drove close to her fresh laundry which was hanging to dry, splattering it with mud.

The Tenant testified that she is now on medication due to the stress that the male Landlord has caused her. The Tenant stated that she has lost 30 pounds because of the male Landlord's harassment. She stated that she feared for her grandchildren and her other dog's safety.

The Tenant testified that she had no TV reception from June 20 to July 31, 2015.

The Tenant testified that the male Landlord cut off her utilities on July 1, 2014, and therefore she called the police.

The Tenant testified that there are three police officers who were available to give testimony with respect to her claim and that "everything is documented in the [police] file". She stated that the male Landlord refused to accept rent in June, 2014, and that he also refused to accept rent from one of the police officers.

The three police officers were called to give their testimony. We were advised by the person who answered the telephone that one of the officers was "not working today"; another of the officers stated that she is "not a witness" and has "no direct or indirect knowledge of events" surrounding the tenancy; and the third officer declined to give testimony.

The Tenant's witness HM testified that she moved into one of the residences on the rental property on October 2013, and moved out on the "May long weekend" of 2014. She stated that before she moved in, the Landlords' tenants were only male batchelors and that after her tenancy ended, the Landlords only rented to women and families. HM testified that the male Landlord would show up unannounced and that she never felt so harassed by a landlord in the 15 years she has been a renter. HM stated that on April 15, 2014, she asked for a "courtesy call" before the male Landlord intended to show up. She said that the male Landlord "lost it" and stated, "the day I have to call to go on my own property is the day you move out".

The Tenant's witness TH is the Tenant's daughter. TH testified that her mom was excited when she moved into the rental unit, but that over time her mom became bothered by the Landlord showing up unannounced. TH stated that the male Landlord never respected the Tenant's privacy and that she watched her mom's health decline. TH testified that the Tenant did not have adequate heat and that her utilities were cut off. TH stated that "before things got bad", she moved into the rental property with her daughter. She testified that she lived at the rental property, in a cabin, from August, 2013 until June 2014, and that she had no privacy.

The Tenant's witness SR is the Tenant's son. SR testified that the male Landlord turned the power off one morning because the Tenant left the outside light on. He stated that he and a police officer attended the rental unit. SR testified that when the Tenant alleged that the male Landlord hit her on the buttocks, the male Landlord stated that the Tenant should pull her pants down and show her bruise. SR stated that the male Landlord wanted \$50.00 to turn the power back on, which he paid, but that the Landlord paid it back later. SR said that he doesn't "know why this is still going on. I want mom to drop it". SR stated that the Tenant's health is suffering and that she is a mess. SR testified that the Tenant was doing really well until the altercation with the male Landlord and that the male Landlord kept "dropping by". SR stated that the Tenant was worried about her dogs getting run over. When questioned, he could not recall "Munchkin" being killed by the male Landlord.

The Tenant seeks a monetary award in the total amount of **\$15,773.00**, which includes return of the security deposit.

The male Landlord MB gave the following testimony:

MB stated that he had to clear snow at the rental property and that he had to drive fast to clear it, but that he would watch out for the Tenant's dogs. He specifically denied killing or injuring the Tenant's dog.

MB testified that he had to turn off the electricity and water in July, 2014, in order to change the water hydrant. MB stated that the water and power were off for only a matter of a few hours, and that he agreed to reconnect it if the Tenant paid a "deposit" of \$50.00 in case the water meter was damaged by turning it on prematurely. MB stated that he returned the \$50.00 deposit when it was clear that there was no damage.

MB stated that the Landlords put in a telephone line for the Tenant, in the Landlords' names and at their own expense.

MB stated that there was heating fuel in the tank at all times during the tenancy. He testified that he supplied the Tenant with screens, which the Tenant took with her when she moved out.

MB testified that the septic tank was working well and that new fields were installed in the summer of 2013. MB testified that the Tenant never gave the Landlords notice that there was any problem with the septic system. He stated that there was a plugged sink on one occasion that was caused by an accumulation of dog hair, but that he cleared it out when the Tenant made him aware of it.

MB acknowledged accidentally cutting the TV cable when he was clearing the Tenant's driveway of snow, but testified that he repaired it.

MB denied harassing the Tenant and disputed all of her claims. MB stated that the Tenant told him she would "get him for this" after he served her with a Two Month Notice to End Tenancy for Landlord's Use. He acknowledged that he has not returned the security deposit to the Tenant, and stated that he kept it because she did not pay rent for June or July, 2014. MB denied that he refused to accept rent from the Tenant for June or July, 2014.

The Landlords' witness TS moved into the rental unit in August, 2015, after the Tenant moved out. TS testified that if he ever has an issue, MB is there within a day to fix it. TS stated that the Landlords were "nice" and that the rental unit was clean when he moved in. TS testified that he has had no issues with plumbing at the rental unit.

**Analysis**

What amount did the Tenant pay the Landlords for a security deposit?

The decision on the parties' hearing on June 20, 2014, includes the following paragraph, under "Background and Evidence":

"The parties agree that this month to month tenancy started on April 1, 2012. Rent for this unit is \$550.00 per month which includes power and heat. The tenant paid a security deposit of \$250.00 at the start of the tenancy."

There is no indication in the Residential Tenancy Branch's electronic filing system that the Tenant requested clarification or a correction with respect to the above paragraph. I find on the balance of probabilities that the security deposit paid was \$250.00.

The decision on the parties' hearing on September 18, 2014, includes the following paragraph under "Preliminary Matter":

"The tenant stated that the landlord was provided with the tenant's written forwarding address at the end of July 2014, but the security deposit has not been refunded. At my request, the tenant provided her forwarding address for service in order to receive this decision by mail."

There is no indication in the electronic filing system that the Landlords sought clarification or correction of the September decision and therefore, I accept that the Landlords had the Tenant's forwarding address by July 31, 2015.

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act. A landlord may not arbitrarily decide whether or not to keep the security deposit.

The Act requires a tenant to provide a forwarding address within one year of the end of the tenancy date in order to be entitled to return of the security deposit.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written 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.

I find that the Landlords did not have a right under the Act to retain any of the Tenant's security deposit. I find that the Landlords did not make an application for dispute resolution against the security deposit, or return the full amount of the security deposit within 15 days of receipt of the Tenant's forwarding address in writing.

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.

Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit in the amount of **\$500.00**.

Has the Tenant established an entitlement to monetary compensation from the Landlords for breach of quiet enjoyment, pain and suffering?

Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides arbitrators with the authority to determine the amount of, and order that party to pay, compensation to the other party.

Before an arbitrator can make an order under Section 67 of the Act, the applicant(s) must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant(s) took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the Tenant to prove her claim against the Landlord, on the balance of probabilities.

Under Section 28 of the Act, tenants are entitled to quiet enjoyment of their rental unit. The right to quiet enjoyment includes the right to "freedom from unreasonable disturbance".

Section 32 of the Act deals with a landlord's obligation to repair and maintain a rental unit. It provides, 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.

I find that the Tenant did not provide sufficient evidence to prove her claim for damages, for the following reasons:

1. The Tenant's son testified that he was unaware that the Tenant's dog was injured or killed by the Landlord.
2. One police officer was unavailable to give testimony, another stated that she had not direct or indirect knowledge of events, and the third declined to give

3. testimony. The Tenant did not provide written statements from the police officers, a copy of any police report, or evidence that criminal charges were laid against the male Landlord. Therefore, I find that there was insufficient evidence to support that the Tenant's allegations that the male Landlord sexually assaulted her, kidnapped her grandchildren, caused damage to her car, or tampered with her mail.
4. The Tenant's other two witnesses' testimony was vague and not supported by dates, or other specific particulars.
5. I find that there was insufficient evidence to conclude that the Landlords violated Section 32(1)(a) of the Act with respect to the rental unit's insulation, plumbing, or heat.
6. The Landlords provided copies of written statements made by the Tenant and the Tenant's witness TH, along with statements of 4 of the Landlords' other tenants. The Tenant's statement was written in support of the Landlords with respect to another of the Landlords' tenancies, and after the Tenant had lived at the rental unit "for nearly two years". The Tenant's written statement includes, in part,

"Landlords also built a garage and laundry rm to make things easier for me and anything else necessary to my convenience over and above the call of the Landlords responsibilities. I've come to love and respect Landlords and believe that if anyone deserves retribution, it would be the Landlords." [reproduced as written]

TH's written statement is dated October 14, 2013. It provides, in part,

"Since I have lived here [the Landlords] have gone above and beyond with being helpful. They are truly the most nicest, caring and wonderful landlords I've ever had!"

7. The male Landlord disputed all of the Tenant's damage claims.

Considering the totality of the evidence, I find that in the absence of other substantive independent evidence the Tenant has not met the burden of proof. Therefore, the Tenant's claim for damages under Section 67 of the Act is dismissed without leave to reapply.

### **Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$500.00** for service upon the Landlords. 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: December 10, 2015

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Residential Tenancy Branch

