



# 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 November 5, 2015, and adjourned because of service issues. An Interim Decision was issued on November 6, 2015, which should be read in conjunction with this Decision.

The parties gave affirmed testimony.

The Tenant acknowledged receipt of the Landlord's documentary evidence.

### **Issues to be Decided**

- Has the Tenant proven, on the balance of probabilities, that the Landlord did not comply with the Act, regulation or tenancy agreement? If so, is the Tenant entitled to compensation?

### **Background and Evidence**

This tenancy began on November 29, 2014. There is no written tenancy agreement between the parties. Monthly rent was \$850.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00.

On March 18, 2015, the Tenant received a 2 Month Notice for Landlord's Use. The Tenant did not dispute the Notice.

On April 3, 2015, the Tenant gave the Landlord 10 days' notice that she would be ending the tenancy effective April 13, 2015. On April 3, 2015, the Landlord issued a 10 Day Notice for Unpaid Rent for the month of April, 2015.

The Tenant gave the following testimony:

The rental unit is a basement suite in the Landlord's house. The Landlord lives in the other suite. The Tenant stated that the parties had an oral tenancy agreement which included utilities, internet and basic cable plus 2 channels. She testified that after she paid the security deposit, the Landlord told her that internet was no longer included.

The Tenant submitted that she is entitled to compensation for the 2 Month Notice to End Tenancy, in the equivalent of one month's rent. She testified that she did not pay rent when it was due on April 1, 2015, because she was going to end the tenancy on April 13, 2015.

The Tenant stated that she amended her Application on October 14, 2015, at the local Government Agent's office. She testified that she amended it to include a request for compensation under Section 51(2) of the Act, and that she sent the amended Application to the Landlord by registered mail on October 16, 2015.

The Tenant testified that there were 3 floods in the rental unit over the course of the tenancy, on December 1, 15 and 31, 2014. She stated that she did not enjoy full use of the rental unit; could not sleep in her bedroom because of the noise of the blowers; she had to pay \$100.00 to store personal items; and that it was cold in the rental unit because the blowers brought in outside air for ventilation. The Tenant stated that it was -15 degrees outside.

The Tenant stated that in December, 2014, the Landlord constantly sent her texts and phoned her early in the mornings. The Tenant provided copies of texts in evidence.

The Tenant stated that there was a "sewer" smell in the rental unit, which "came and went" from January to March, 2015. The Tenant stated that she could not eat, cook or entertain in the rental unit because of the smell. She stated that on one occasion she had a potential business partner over for dinner and was embarrassed when he commented about the sewer smell. The Tenant stated that the Landlord "placated" her by sending people over to inspect the plumbing, but that no "real plumber" came until March 11, 2015. The Tenant stated that there was also a "dead animal" smell in the rental unit.

The Tenant seeks compensation, calculated as follows:

Compensation for loss of internet services (4 months @ \$60.00)	\$240.00
Compensation under the 2 Month Notice to End Tenancy	\$850.00
Rent reduction for December for loss of quiet enjoyment	\$750.00

Rent reduction for January – March (3 months @ \$300.00)	\$900.00
Moving expenses	\$130.00
Compensation under Section 59(2) of the Act	<u>\$1,700.00</u>
TOTAL CLAIM	\$4,570.00

The Landlord gave the following testimony:

The Landlord stated that there is no written tenancy agreement because she was given “bad information”. She agreed that utilities were included in the rent, but not internet because of a problem she had with a previous tenant. The Landlord testified that the security deposit was not paid until after she advised the Tenant that internet was not included in rent.

The Landlord testified that she received copies of the Tenant’s documentary evidence by registered mail, but that she did not receive a copy of the Tenant’s amendment to her Application.

The Landlord stated that the rental property’s roof leaked, causing the basement to flood on November 27, 2014. She testified that she asked the restoration team to “deal with the Tenant personally and to make sure that she was OK”. The Landlord denied that the Tenant’s quiet enjoyment of the rental unit was affected. She stated that the restoration took place over 5 days in December and that the “furnace guy was there for only one hour”.

The Landlord stated that she cannot fix anything that she doesn’t know about. She testified that the Tenant didn’t say anything to the Landlord about a sewer smell until March 3, 2015. The Landlord stated that the drains were “done on March 4, 2015” and that the plumber came on March 11, 2015. The Landlord stated that the Tenant did not tell her about the dead animal smell, but that she discovered a dead mouse in the living room ceiling after the Tenant moved out.

**Analysis**

The Landlord stated that she was not served with a copy of the Tenant’s amended Application. During the Hearing, I advised the Tenant that the amendment was not made in accordance with the Rules of Procedure. Therefore, I found that the Tenant’s amendment was not properly before me and therefore would not be considered in this Decision. The Tenant is at liberty to make another Application with respect to compensation under Section 51(2) of the Act.

It is important to note that after the Hearing had concluded, I discovered the Tenant’s “amended” Application buried in the Tenant’s 59 page documentary evidence package.

Amended Applications must be clearly identified and provided separately from all other documents.

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.

The Tenant provided a portion of a copy of an internet bill, but it is dated "July 10 to August 9" (no year), does not describe what services are included in the \$60.00 charge, and does not identify the Tenant as the recipient of the bill. Therefore, I find that there is insufficient evidence that the monetary amount claimed is verified and this portion of her claim is dismissed.

Section 51 of the Act provides:

**Tenant's compensation: section 49 notice**

**51** (1) 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Section 50 of the Act provides:

**Tenant may end tenancy early following notice under certain sections**

- 50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

In this case, the Tenant gave notice under Section 50 of the Act to end the tenancy earlier than the effective date of the Notice. I find that the Tenant is entitled to compensation pursuant to Section 51 of the Act, minus the unpaid prorated rent for the month of April, as follows:

Monthly rent	\$850.00
Less \$850.00 / 30 days x 13 days	<u>-\$368.33</u>
Total compensation	<b>\$481.67</b>

The following is an excerpt from Policy Guideline 16: *Claims in Damages*:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

In this case, I find that there is insufficient evidence that the Landlord breached the Tenant's right to quiet enjoyment, or the Landlord's responsibility under Section 32 of the Act; however, I am satisfied that the Tenant was deprived of the use of part of the rental unit through no fault of her own. I find that the value of the tenancy was devalued and that the Tenant is entitled to compensation by way of rent abatement in the amount of **\$800.00** (\$200.00 per month for 4 months).

Compensation under Section 49 of the Act is partially intended to compensate a tenant for the cost of moving. This portion of her Application is therefore dismissed.

### **Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,281.67** for service upon the Landlord. 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: February 11, 2016

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Residential Tenancy Branch

