



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, CNR

### Introduction

On May 17, 2016, and June 2, 2016, the Tenants applied for dispute resolution seeking to cancel a 2 Month Notice To End Tenancy For Landlord's Use of Property (the 2 Month Notice); to cancel a 10 Day Notice To End Tenancy For Unpaid Rent or Utilities (the 10 Day Notice); and for money owed or compensation for damage or loss under the *Residential Tenancy Act* ("*the Act*"), regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The documentary evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

At the start of the hearing the Tenants testified that they have given the Landlord written notice to end the tenancy early based on the 2 Month Notice given to them by the Landlord. The Tenant's withdraw their claim to cancel the 2 Month Notice dated May 8, 2016.

The Landlords testified that they became aware that the Tenants are entitled to one month of free rent based on the 2 Month Notice they issued, and they withdraw the 10 Day Notice To End Tenancy for Unpaid rent dated June 2, 2016.

Issue to be Decided

Is the Tenant entitled to compensation for money owed or for damage or loss under the *Act*, regulation, or tenancy agreement?

Background and Evidence

The Parties testified that their tenancy agreement is an oral agreement and was never put in writing. The Parties testified that the tenancy began on August 15, 2015, as a month to month tenancy. Rent in the amount of \$1,200.00 per month is paid on the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$600.00.

The Tenants testified that they paid the Landlords a \$600.00 pet deposit in cash at the same time they paid the security deposit. The Tenant M.L. testified that she paid the pet deposit directly to the Landlord M.S. The Landlords dispute that the Tenants paid them a pet deposit.

The Landlords live in the upstairs unit of a house and the Tenants live in the bottom rental unit of the house. The Tenants testified that the Landlords have never been Landlords before and they do not understand their rights or his obligations under the *Act*.

The Tenants testified that the Landlords were telling them what they could or could not do in their rental property and were telling them to clean it up. The Tenants testified there were issues with the heat; improper entry; demands to get rid of a pet; complaints about their dog; threats; and improper conduct by the Landlords. The Tenants testified that they feared that the Landlords would order them to get rid of their dog so they requested the tenancy agreement be put into writing. The Tenants testified that it was after they requested that the tenancy agreement be put in writing that the Landlords began to threaten eviction, and shortly afterwards the Landlords issued a 2 Month Notice To End Tenancy For Landlord Use Of Property.

The Tenants testified that the Landlords were not following the *Act* and that the Landlords' behaviour caused them to feel unsafe, stressed and upset. The Tenants have requested a monetary claim in the amount of \$12,950.00.

### Heat

The Tenants testified that the Landlords have the only control of heat for the rental unit. In November 2015, the Tenants asked the Landlords to turn up the heat. The Tenants asked the Landlord to turn up the heat approximately six times. They submit that the Landlord would not turn the heat up high enough, so the Tenants purchased a space heater. The Tenants state that the Landlords got angry with them because the hydro bill went up.

The Landlords responded by testifying that they asked the Tenants if it was cold in the rental unit. The Landlords told the Tenants not to use the space heater because it costs too much money, and said they would turn up the heat. The Landlords stated that the higher hydro bill was likely attributable to having appliances wired into 220 volt receptacles.

### Improper / Illegal entry

The Tenants testified that after they asked the Landlords to turn up the heat the Landlord M.S. knocked on the Tenants door and entered the rental unit uninvited and proceeded to walk through and check the heat vents. The Tenant M.L. testified that she was in her pyjamas and felt very uncomfortable and asked the Landlord to leave. The Tenant testified that the Landlord left after a couple of minutes.

The Tenants testified that on May 8, 2016, that the Landlords threatened to enter the rental unit for an inspection and to remove the 220 volt outlets, and that there would be no power to the washer, dryer, stove and dishwasher. The Tenants testified that they do not know if the Landlords entered the rental unit but the Landlords did not restrict the power to these appliances.

In response the Landlords testified that they did not enter the rental unit for the inspection.

### Pets

The Tenants testified that they are allowed to have a dog as agreed in the tenancy agreement. They testified that the Landlords told them they had full use of the backyard as a term of the tenancy. They testified that after they moved in the Landlord asked them to ensure their dog did not urinate on the grass and to restrict the dog's urination and defecation to a specific three foot by six foot area in the yard. They submit that the Landlords required them to constantly watch their dog while it was in the yard. The

Tenants testified that they took steps to protect the Landlord's grass by buying magic rocks which change the harmful effect of dog urine and that the Landlords were satisfied with that solution. The Tenants testified that shortly thereafter the Landlords asked them to get rid of their dog.

The Tenants provided documentary evidence where the Landlord M.S. stated that if they don't watch their dog in the yard, they would have to get rid of him by the end of the month. The documentary evidence states that the Landlord spoke to them on May 7, 2016, and stated that the Landlord wants the basement suite to be pet-free. The Tenants state they disagreed and the Landlord began to swear at them and text them.

The Tenants testified that they adopted a pet snake but they did not seek prior approval from the Landlords before adopting it. The Tenants believed that the Landlords verbally agreed to it upon discovering the snake during an inspection. The Tenants testified that the Landlord demanded that the Tenants get rid of the snake. The Tenant M.L. testified that she asked the Landlords to put the demand in writing and to provide a written tenancy agreement.

The Tenants have provided documentary evidence of a text message exchange from the Landlord M.S. The Tenants provided this text message sent by the Landlord to the Tenants on May 3, 2016:

*"Fair Warning, I mark street maple ridge will be going to the city bylaw dept to explain the suite that it is a TRU unit. that means family members only. On May 10 2016 at approximately 11:00 am I will be entering my suite to remove all 220 volt outlets according to city bylaws, you can check that out if you wish because I have. There will be no power to the washer, dryer, stove, and dishwasher. We will not evict you, the city of maple ridge will, you can check that out as well, also if you would like to check out the TRU you can contact to verify. Pretty sad that it had to come to this over a snake. You had the thwart your knowledge of the tendency act. Ok I will contact the bylaw office first thing Monday morning and have them come up and declare this an eleagle suite. I will have to take out all the 220 volt outlets right away, you will then have 2 weeks to leave this I know. It is a tru suit temporay residential unit. Only family members can rent it leagley. My house is paid for and nobody is going to tell me what to do. After you are out, I will replace the 220 volt and Sam will move in, so how do you want to play this, I mean what I say, nobody tells me what to do with my house". (Reproduced as written)*

The Tenants state that the Landlord told them the snake leaves or you have two months to get out. The Tenants state they agreed to find a new home for the pet snake and asked that the Landlord to go over the tenancy agreement with them and the Landlord responded by saying they have two months because their daughter will be moving in. The Tenants state they called the Landlord that evening to discuss the issue and the Landlord stated *"your not going to control me you little b\*\*\*h, this is my house and I f\*\*\*\*\*g throw your ass out on the street tonight and throw your animals out this second"*.

The Landlord issued the Tenants a 2 Month Notice on May 8, 2016, stating that the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member.

The Landlord testified that the backyard was for shared use by the Landlords and Tenants. The Landlords testified that they asked the Tenants to get their dog to urinate and defecate in a specific area of the yard. The Landlords testified that the Tenants were welcome to use the yard provided they picked up the dogs excrement. The Landlords testified that when the tenancy agreement was formed there was no term restricting the Tenant or the Tenant's dog using the back yard. The Landlord testified that he never issued any type of breach letter to the Tenants regarding this issue.

#### Storage on Patio

The Tenants testified that the Landlords do not respect their rights as Tenants and the Landlord did not follow the tenancy agreement or the Act. The Tenants testified that on November 15, 2015, the Landlords knocked on their door and demanded that they get rid of some of their property stored on their patio area. The Tenants provided documentary evidence that states the Landlord yelled and explained that it was his home and he wants his property to be kept the way he wanted it.

Having been served with a 2 Month Notice, the Tenants gave the Landlord written notice to end the tenancy early on July 1, 2016, as permitted by section 50 of the Act. The Tenants received the month of June 2016, rent free as compensation for the 2 Month Notice.

#### Analysis

Section 7 of the Act states that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. 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 what is reasonable to minimize the damage or loss.

Based on the above, the evidence and testimony, and on a balance of probabilities, I make the following findings.

### The Tenancy Agreement

Section 12 of the *Act* states that the standard terms are terms of every tenancy agreement whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and whether or not the tenancy agreement is in writing.

Section 13 of the *Act* states that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

The Landlord breached section 13 of the *Act* by not preparing a written tenancy agreement and not providing a copy to the Tenant within 21 days after the agreement was made.

The Landlord testified that the Tenants did not pay a pet deposit. The Tenants state they paid a pet deposit but did not provide a receipt. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. The Tenants provided documentary evidence that indicates that they had discussions with the Landlords on July 31, 2015, and agreed to pay \$600.00 for half a month's rent and \$600 for a security deposit for a total of \$1,200.00. There is no mention of a pet deposit. Based on this evidence I find that that it is more likely than not that the Tenants did not pay the Landlord a pet deposit.

### Heat

Section 27 of the *Act* states that landlord must not terminate or restrict a service or facility if:

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*
- (b) providing the service or facility is a material term of the tenancy agreement.*

Heat in the rental unit is controlled by the Landlord. By the nature of this setup, the Tenants must ask the Landlords to adjust the heat. The Tenants chose to buy a heater rather than continuing to ask the Landlord to turn adjust the heat. The Tenants have provided insufficient evidence that they asked the Landlord for heat and that the Landlord did not provide heat. As such, I find the Landlords have provided heat to the rental unit sufficiently to comply with their obligations under Section 32 of the Act.

I also find that the provision of heat under the arrangement the parties had from the start of the tenancy has not been altered in any way, other than the Tenant's decision to purchase of a heater. As such, pursuant to Section 27 of the Act, I find the Landlords have not restricted the provision of heat during this tenancy. Accordingly, I dismiss the Tenant's claim for restriction of heat to the rental unit due to insufficient evidence.

Improper / Illegal entry

Section 28 of the *Act* states 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.*

I find the Tenants have failed to substantiate their claim that the Landlord entered the rental unit illegally, or that the Tenants have suffered any loss as a result. There is no evidence that the Tenant told the Landlord to leave when he knocked on the door. The Landlord came into the rental unit to check the vents, and the Landlord left after the Tenant asked him to leave.

Based on the above, I find the Tenants have failed to provide sufficient evidence that the Landlord entered the rental unit for an unreasonable purpose. And finally, I find the Tenant has failed to provide any evidence that as a result of the Landlords' entry into the rental unit they have suffered any loss of quiet enjoyment pursuant to Section 28. Accordingly, I dismiss the Tenant's claim for illegal entry into the rental unit.

### Pets

I find that there were no terms in the verbal tenancy agreement that restricted the Tenant's use of the backyard. The Landlord's testimony was inconsistent on this issue. The Landlord M.S. testified that there were no terms restricting the Tenant or the Tenant's dog using the backyard when the verbal tenancy agreement was entered into. The Landlord T.S. testified that the Tenants were welcome to use the yard provided they pick up the dogs excrement.

Under section 28 of the *Act* the Tenants are entitled to quiet enjoyment including reasonable privacy and use of common areas for reasonable and lawful purposes free from significant interference.

I find that the Tenants had the right to full use of the backyard. I find that the Tenants were not obligated to watch their dog every time it was in the backyard to ensure that the dog only defecated in a specific area. I find that the Tenants took reasonable steps to minimize any damage to the property by dealing with the dog's urine in the yard.

I find that the Landlords breached the tenancy agreement by significantly interfering with the Tenant's use of the backyard.

I assign the value of the yard to be 15% of the monthly rent of \$1,200.00 which amounts to \$180.00 per month. The Tenants had use of the yard but their use was restricted. The loss of use of the backyard would only amount to a percentage of the \$180.00 monthly value. I find that the Landlord's interference with the Tenants use of the backyard began in April, 2016. I award the Tenants 50% of the \$180.00 per month value for three months. I award the Tenants \$90.00 per month for three months for a total amount of \$270.00.

With respect to the pet snake that the Tenants acquired during the tenancy, the Tenants did not get prior approval from the Landlord. I do not accept that there was an oral agreement or implied consent because the Landlords did not object to the snake when they first discovered it. The Landlords notified that the Tenants to get rid of the snake and the Tenants were obligated to do so. Accordingly, I dismiss the Tenant's claim regarding the pet snake.

### Storage on Patio

Section 32 of the Act states a Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property which the Tenant has access.

Pursuant to section 28 of the Act the Tenants are entitled to quiet enjoyment including reasonable privacy and use of common areas for reasonable and lawful purposes free from significant interference.

I find that the Tenants had a right to store some of their property on their patio area. There was no term in the tenancy agreement that restricted their use of the patio area. There is insufficient evidence from the Landlord that the Tenants were not maintaining reasonable health, cleanliness and sanitary standards of the property as required in section 32 of the Act. I find that the Landlord was significantly interfering with the Tenants use of the property.

I assign the value of the yard to be 15% of the monthly rent of \$1,200.00 which amounts to \$180.00 per month. The use of the patio for storage would only amount to a small portion of the property and I award the Tenants 25% of the \$180.00 per month. I find that the Landlord's interference with the Tenants use of the patio are for storage began in November, 2015. I award the Tenants the amount of \$45.00 per month for seven months for a total award of \$315.00

### 2 Month Notice to End Tenancy

The Tenants argue that the Notice was issued in bad faith, but they accepted the Notice on May 30, 2016, when they and gave early Notice to end the tenancy on July 1, 2016, and accepted the compensation under section 51 of the Act of one month's rent. During the hearing, the Tenants withdrew their claim to cancel the 2 Month Notice dated May 8, 2016.

The Tenants cannot benefit from accepting the 2 month Notice and then seek further compensation based on it being issued in bad faith. I dismiss the Tenants claim requesting compensation due to the Landlord issuing a Notice in bad faith.

I find that the Tenants have established a claim in the amount of \$585.00 for loss of use of the rental property. I grant the Tenants a monetary order in the amount of \$585.00 This monetary order may be filed in the Provincial Court (Small Claims) and

enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Tenants suffered a loss of use of the property and are awarded a monetary amount of \$585.00.

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: June 16, 2016

---

Residential Tenancy Branch