



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, RP, RPP, PSF, LAT, AS, SS, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for:

- a monetary Order for money owed or compensation for damage or loss;
- an Order requiring the Landlord to make repairs to the rental unit;
- an Order requiring the Landlord to return personal property;
- an Order requiring the Landlord to provide services or facilities;
- authority to change the locks;
- authority to assign the tenancy or sublet the rental unit;
- authority to serve documents in a manner not prescribed by the *Residential Tenancy Act (Act)*; and
- recover the fee for filing this Application for Dispute Resolution.

During the hearing the Tenant withdrew the application for authority to serve documents in a manner not prescribed by the *Act* and for authority to assign or sublet the rental unit.

The Tenant stated that on May 17, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord at the rental unit, via registered mail. The Tenant submitted an Undertaking Given to a Justice or a Judge, dated May 16, 2016, in which the Landlord was prohibited from going to the rental unit except in the company of a police officer. The Tenant stated that in spite of that prohibition the Landlord has been living at the rental unit since May 17, 2016. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Act*; however the Landlord did not appear at the hearing.

On June 02, 2016 the Tenant submitted 4 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on June 04, 2016, that the Landlord slapped the documents out of her hand, and that the Tenant subsequently threw the documents into the Landlord's bedroom. In the absence of evidence to the contrary I find that these documents have been served to the Landlord in accordance with section 88 of the *Act*.

On June 07, 2016 the Tenant submitted 1 page of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on June 08, 2016, that the Landlord slapped the document out of her hand, and that the Tenant subsequently placed the document under the door to the Landlord's bedroom. In the absence of evidence to the contrary I find that this document has been served to the Landlord in accordance with section 88 of the *Act*.

On June 10, 2016 the Tenant submitted 5 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

#### Preliminary Matter

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

I find that the Tenant's Application for Dispute Resolution does not provide full details of the Tenant's application for repairs. In reaching this conclusion I was heavily influenced by the fact the Tenant does not explain what repairs are required in the Application for Dispute Resolution or in documents filed with that Application.

I find that the Tenant's Application for Dispute Resolution does not provide full details of the Tenant's application for the return of personal property. In reaching this conclusion I was heavily influenced by the fact the Tenant does not explain, in the Application for Dispute Resolution or in documents filed with that Application, the property the Tenant wants returned.

I find that proceeding with the Tenant's claim for repairs or return of personal property would be prejudicial to the Landlord, as the absence of particulars makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the claims. The Tenant retains the right to file another Application for Dispute Resolution in which she applies for an Order requiring the Landlord to repair the rental unit or to return personal property.

### Issue(s) to be Decided

Is the Tenant entitled to:

- a monetary Order for money owed or compensation for damage or loss;
- an Order requiring the Landlord to provide services or facilities;
- an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- authority to change the locks?

### Background and Evidence

The Tenant stated that:

- she moved into the rental unit on April 15, 2016;
- she agreed to pay monthly rent of \$400.00 by the 15<sup>th</sup> day of each month;
- she thinks the rental unit is owned by the Landlord's mother, although she is not certain;
- she does not know whether the Landlord was acting as an agent for the owner of the rental unit when she entered into this tenancy agreement with the Tenant;
- the Tenant and the Landlord each had a private bedroom on the residential complex;
- she shared the kitchen facilities with the Landlord, including dishes and cookware;
- approximately one month ago the Landlord removed all of the dishes and cookware from the kitchen and locked them in her bedroom;
- approximately one month ago the Landlord removed the stove burner elements and dials from the stove and locked them in her bedroom;
- on June 17, 2016 the police provided the Tenant with access to one stove element;
- the Tenant still does not have access to dishes and cookware that were to be provided with the tenancy;
- internet and cable service was to be included with the tenancy;
- approximately 2 or 3 days after the start of the tenancy the Landlord terminated the internet and cable service in the living room, which prevented the Tenant from using those services;
- she has been unable to use the internet services since the Landlord terminated them in the living room;
- sometime in May of 2016 the Landlord punched her in the arm, although she does not recall what precipitated this contact;
- the punch to the arm did not cause any bruising;
- the punch to the arm was not reported to the police;

- sometime in May of 2016 she was watching the television when the Landlord came into the room and changed the channel without saying anything;
- the Tenant grabbed the remote control from the Landlord;
- the Landlord “jumped” on the Tenant in an attempt to recover the remote;
- the Landlord scratched the Tenant’s arms during this altercation over the remote;
- the Landlord reported altercation over the remote to the police;
- the police did not lay any charges in regards to the altercation with the remote;
- on May 15, 2016 or May 16, 2016 the Tenant was cooking and the Landlord became upset about an item being used by the Tenant;
- the Landlord attempted to retrieve the item from the Tenant;
- while the Landlord was attempting to retrieve the item she poured beer on her and struck her in the face with her elbow;
- the Tenant suffered a cut on her lip during the altercation on May 15, 2016 or May 16, 2016;
- the Tenant reported the May 15, 2016 or May 16, 2016 incident to the police;
- the police arrested the Landlord on May 15, 2016 or May 16, 2016;
- on May 16, 2016 or May 17, 2016 the Tenant was turning on an electrical breaker in anticipation of cooking when the Landlord attempted to prevent her from turning on the breaker;
- in an effort to prevent the Tenant from turning on the breaker the Landlord scratched the Tenant on the back and arms and bit her on the breast;
- the Tenant reported the May 16, 2016 or May 17, 2016 incident to the police;
- the police did not pay charges in relation to the incident on May 16, 2016 or May 17, 2016;
- the Landlord has reported minor concerns with the Tenant to the police on approximately 30 occasions during this tenancy;
- the police have responded to all of those reports;
- sometime in May of 2016 the Tenant forgot her keys inside the rental unit;
- she repeatedly knocked on the door of the rental unit but the Landlord would not open the door;
- the Landlord was taunting her through the locked door;
- she had to sleep in the hallway because the Landlord would not let her in the door;
- she was only able to access the rental unit the next morning when the Landlord left to walk her dog;
- on several occasions the Landlord has entered her bedroom without permission;
- she feels unable to function as a result of the conflict with her Landlord; and
- the conflict left her feeling unable to find alternate accommodations.

## Analysis

On the basis of the Tenant's testimony I find that the Tenant agreed to pay monthly rent of \$400.00 by the 15<sup>th</sup> day of each month. Although in her written declaration the Tenant declared that she paid \$500.00 for room and board, I find her testimony is corroborated by the tenancy agreement she submitted in evidence.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

On the basis of the undisputed evidence I find that this tenancy provided the Tenant with the right to share the kitchen, dishes, and cookware with the Landlord. I find that the use of the kitchen facilities and cookware is essential to the Tenant's use of the rental unit and that the Landlord did not, therefore, have the right to restrict the Tenant's ability to use the kitchen.

On the basis of the undisputed evidence I find that the Landlord significantly restricted the Tenant's ability to cook in the rental unit when she removed the stove burner elements, the stove dials, the dishes, and cookware from the kitchen. I therefore order the Landlord to immediately return those items to the kitchen and to provide the Tenant with unrestricted access to those items.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord significantly breached the Tenant's right to the quiet enjoyment of the rental unit when she restricted the Tenant's ability to use the cooking facilities in the rental unit. I find that this breach has reduced the value of this tenancy by 50%. As the Tenant contends this breach began approximately one month ago, I find that the Tenant is entitled to compensation of \$200.00 for the breach, which is 50% of her monthly rent.

I authorize the Tenant to reduce her next monthly rent payment by \$200.00 if the Landlord has not provided her with unrestricted access to cookware, dishes, and cooking facilities by July 15, 2016. I further authorize the Tenant to reduce each subsequent monthly rent payment by \$200.00 until such time as the Landlord provides unrestricted access to cookware, dishes, and cooking facilities.

Section 27(2) of the *Act* authorizes a landlord to terminate or restrict a non-essential service or facility if the landlord gives 30 days' written notice of the termination or restriction and reduces the rent in an amount that is equivalent to the reduction in the

value of the tenancy agreement resulting from the termination or restriction of the service or facility.

On the basis of the undisputed evidence I find that shortly after this tenancy began the Landlord terminated the Tenant's ability to use the cable and internet when she terminated those services in the living room. As there is no evidence that the Landlord provided the Tenant with written notice of the termination, I order the Landlord to immediately restore internet and cable service to the living room.

Although the Landlord did not have the right to terminate internet and cable service shortly after this tenancy began, I find that the Tenant is entitled to compensation for the 11 weeks she was without internet/cable in an amount that is equivalent to the reduced value of the tenancy as a result of the termination. I estimate that the value of this tenancy was reduced by \$15.00 per week as a result of the terminated cable/internet service, which is \$165.00 for 11 weeks.

On the basis of the undisputed evidence I find that the Landlord breached the Tenant's right to her quiet enjoyment of the rental unit in May of 2016 when she became involved in at least four physical altercations with the Tenant, three of which resulted in physical injury to the Tenant. Although the Tenant appears to have contributed to at least one of these physical altercations by grabbing a remote control from the Landlord, the Landlord's response to the situations was, in my view, unreasonable.

I find that the assaults in May of 2016 reduced the value of this tenancy in May by 25% and that the Tenant is entitled to compensation of \$100.00 for these breaches, which is 25% of her monthly rent for May of 2016.

I find that I have insufficient evidence to conclude that the Landlord breached the Tenant's right to the quiet enjoyment of the rental unit when she contacted the police to report various concerns about the Tenant, which the Tenant describes as minor disagreements. Given the apparently volatile relationship between the parties that has resulted in physical altercations on at least four occasions, I cannot conclude that it was unreasonable for the Landlord to seek assistance from the police for conflicts arising between the parties. In the absence of specific details regarding why the reports being made by the landlord were unreasonable in these circumstances, I find the Tenant is not entitled to compensation for reports made to the police.

In determining the amount of compensation due to the Tenant as a result of a breach of her right to quiet enjoyment of the rental unit, I was influenced, in part, by the fact the Tenant still had the ability to sleep in the rental unit and use the washroom facilities, which causes me to conclude that the tenancy had some value and that some rent was due.

Residential Tenancy Branch Policy Guideline #16, with which I agree, reads, in part:

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.)

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. (Emphasis added)

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

In adjudicating this matter, the amount of compensation awarded was influenced by the fact the Tenant has not informed the Landlord she is seeking "aggravated damages" and I have not, therefore, considered whether the Tenant is entitled damages that exceed the reduced value of the tenancy.

There is nothing in the *Act* that requires a landlord to provide a tenant with access to a rental unit if the tenant forgets or loses keys unless that is a service that has been agreed to as a term of the tenancy agreement. In the absence of evidence to show that the Landlord agreed to provide the Tenant with access to the rental unit if the Tenant loses or forgets her keys, I cannot conclude that the Landlord was obligated to provide the Tenant with access to the unit when she forgot her keys inside the unit. In these circumstances the Tenant had the option of absorbing the cost of having a locksmith provide her access to the rental unit. As the Landlord was not obligated to provide the Tenant with access to the unit when the Tenant forgot her keys inside, I cannot conclude the Tenant is entitled to compensation for this incident.

As the undisputed evidence shows that the Landlord has entered the Tenant's bedroom without permission on more than one occasion, I hereby Order the Landlord to refrain from entering the rental unit except in the following circumstances:

- at least 24 hours and not more than 30 days before the entry, the Landlord gives the Tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the Tenant otherwise agrees;
- the Landlord has an order of the director authorizing the entry;
- the Tenant has abandoned the rental unit;
- an emergency exists and the entry is necessary to protect life or property.

It is my expectation that the Landlord will not enter the rental unit except in accordance with the aforementioned Order. I therefore find it unnecessary to grant the Tenant's application for authority to change the locks to her bedroom. In the event the Landlord enters the rental unit in a manner that contravenes the aforementioned Order, the Tenant has the right to file another Application for Dispute Resolution in which she seeks authority to change the locks.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to compensation, in the amount of \$100.00, for the cost of filing this Application for Dispute Resolution.

### Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$565.00, which includes \$300.00 for the loss of the quiet enjoyment of her rental unit, \$165.00 for being unable to use the internet, and \$100.00 for the cost of filing this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for \$565.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: July 03, 2016

---

Residential Tenancy Branch