



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MNDC, LAT, RR, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 1, 2016 ("2 Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- other unspecified remedies.

The landlord BT ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he had authority to represent "landlord KT," the other landlord named in this application, as an agent at this hearing (collectively "landlords"). "Witness AS" testified on behalf of the tenant regarding service of documents and both parties were given an equal opportunity to question the witness.

This hearing lasted approximately 82 minutes in order to allow both parties to fully present their submissions. The hearing began at 9:30 a.m. and concluded at 10:52 a.m. The tenant disconnected from the hearing early at 10:41 a.m., without warning. At 10:45 a.m., I asked the telephone operator to contact the tenant using the phone number provided by her in this application. After three unsuccessful attempts by the telephone operator, who indicated that the tenant's phone went straight to voicemail, and waiting an additional 7 minutes for the tenant to show up, I concluded the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's Application.

At the outset of the hearing, the tenant confirmed that she did not wish to pursue her application for an order to change the locks to the rental unit. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

### Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an order of possession for landlords' use of property?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled an order to allow her to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to other unspecified remedies?

### Background and Evidence

Both parties agreed to the following facts. This tenancy began on August 1, 2014. Monthly rent in the current amount of \$850.00 is payable on the first day of each month. Rent was originally \$900.00 per month as per the written tenancy agreement until the landlords reduced it to \$850.00 as of July 2016. A security deposit of \$450.00 was paid by the tenant and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The tenant continues to reside in the rental unit. The rental unit is a suite in the landlord's house.

The tenant seeks a monetary order of \$1,640.00 total.

The tenant seeks a past rent reduction of \$440.00 total for the loss of the use of a stove. The tenant said that the landlords removed a stove from her rental unit in April 2015 and has not replaced it since. She stated that the City ordered that the landlords remove two of three stoves in the entire house because of a fire hazard and an illegal suite in the house. The tenant confirmed that she was seeking \$90.00 per month as compensation for the loss of use. The tenant seeks \$90.00 for fourteen months from April 2015 to May 2016, totalling \$1,260.00. The tenant seeks \$40.00 per month for two months from July to August 2016, totalling \$80.00, because the landlords reduced her rent from \$900.00 to \$850.00 for the above months, such that only \$50.00 instead of \$90.00 per month compensation was provided to her. The tenant said that the landlords provided her with one month's free rent in June 2016, in the amount of

\$900.00, and that this was deducted from the above \$1,340.00 to leave an unpaid amount of \$440.00.

The landlords dispute the tenant's claim for \$440.00. The landlord said that the tenant agreed to compensation of \$900.00, which was one month's free rent in June 2016, as well as a reduced monthly rent of \$850.00 from July 2016 onwards, in full satisfaction of the loss of the stove. The landlords provided a copy of a letter, dated May 19, 2016, regarding the above agreement, which the tenant agreed she received from the landlords. The tenant agreed that she settled the matter with the landlords for \$900.00 but said it was only a partial settlement because it was unclear what length of time for the loss of the stove was being considered for the above settlement. The tenant said that landlord KT agreed verbally to provide her with \$1,260.00 in compensation for the loss of stove, but the landlord denied this fact during the hearing.

The tenant seeks \$1,200.00 total for a loss of quiet enjoyment at the rental unit. The tenant said that landlord KT comes to the house and completes landscaping using power tools, which causes excessive noise and gas fumes to enter the rental unit. The tenant stated that she has to close her windows and leave the house for the day when this work occurs. The tenant said that landlord KT comes over once to twice a week to do this work and later during the hearing, she said that it was an average of once per month for eight hours per day. The tenant seeks \$50.00 per month for 24 months, which equals \$1,200.00.

The landlords dispute the tenant's claim for \$1,200.00. The landlord stated that landlord KT does have a landscaping business and he does grass cutting, hedge trimming and other garden work on Sundays at the house in order to maintain the area. The landlord agreed that power tools are used but there is only limited noise during the day time, not late night hours. The landlord said that the tenant has not reported any gas problems or other issues with the above yard work to the landlord until she filed this application. The tenant said that she notified the landlords verbally.

### Analysis

#### Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on August 31, 2016, by which time the tenant and any other occupants will have vacated the rental unit.

*Decision regarding Tenant's Monetary Claim*

When a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's claim for a past rent reduction of \$440.00 for the loss of the use of a stove, without leave to reapply. I find that the tenant settled the matter with the landlords prior to the hearing, as documented in the landlords' letter, dated May 19, 2016. I find that the landlords' compensation of \$900.00, which the tenant accepted in June 2016, as well as the reduction of rent to \$850.00 from July to August 2016, is the compensation that the tenant agreed to. Although the tenant said that the date period was unclear, she had the opportunity to clarify that in response to the landlords' above letter, which the letter specifically asked for, but she did not.

I dismiss the tenants' claim of \$1,200.00 for a loss of quiet enjoyment at the rental unit. I find that the landlords are entitled to maintain their yard and garden by using power tools. I do not find that the tenant provided sufficient evidence that it was an unreasonable disturbance that caused a loss of quiet enjoyment. The work is done during daytime hours and the tenant was even unsure of how often the work was done.

The tenant did not provide any evidence about her application for other unspecified remedies. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord(s) **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on August 31, 2016. The landlord(s) are provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on August 31, 2016. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, authorization to change the locks to the rental unit, an order to allow the tenant to reduce past and future rent for repairs, services or facilities agreed upon but not provided, and other unspecified remedies, is dismissed without leave to reapply.

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: August 25, 2016

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Residential Tenancy Branch