



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, DRI RR, MT, MNDC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to allow the tenant more time to make an application to cancel the Notice to End Tenancy
- b. An order disputing an additional rent increase
- c. An order cancelling a one month Notice to End Tenancy for cause
- d. An order cancelling a two month Notice to End Tenancy for landlord's use of property.
- e. A monetary order in the sum of \$5298
- f. An order to allow the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on September 13, 2016.

### Preliminary Matter:

On September 8, 2016 the landlord obtained an Order for Possession and on September 22, 2016 a Writ of Possession. The tenant is no longer in the rental unit and has no desire to regain possession. As a result I dismissed the following claims:

- An order to allow the tenant more time to make an application to cancel the Notice to End Tenancy.
- An order disputing an additional rent increase.

- An Order cancelling the one month Notice to End Tenancy for cause.
- An Order cancelling the two month Notice to End Tenancy for landlord's use of property.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to an order to allow the tenant to reduce repair for repairs, services or facilities agreed upon but not provided.

### Background and Evidence

The tenancy began on April 1, 2012. The present rent is \$890.62 per month payable in advance on the first day of each month. No security deposit was paid. The tenant vacated the rental unit after the Writ of Possession was obtained on September 27, 2016.

### Law

Policy Guideline #6 provides as follows:

#### **“B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed. “

### Analysis

The applicant has the burden of proof to present sufficient evidence to establish his claims on a balance of probabilities.

There is a dispute between the tenant and the landlord with over the payment of rent. The rent was paid directly to the landlord by the Ministry. There was a reduction in the subsidy given by BC Housing. The tenant testified that this reduction was never communicated to him. Over time the arrears mounted unknown to the Tenant. Eventually the arrears were paid in August. However, the landlord insisted on obtaining the Order for Possession. The tenant alleged the landlord's action were negligent. I do not accept this submission. In my view it is the tenant's responsibility to find out the amount of rent that is payable. This is not a basis for a monetary claim against the landlord.

The tenant stated his personal belongings have not been returned. The landlord stated they are in the hands of the Bailiff and tenant must deal with the Bailiff. The Writ of Possession has a provision for dealing with the goods and belongings. I determined the Tenant does not have a claim against the landlord but must deal with the Bailiff with respect to the return of his goods and belongings.

The Application for Dispute Resolution and Monetary Order Worksheet filed by the tenant claims \$5298. With respect to each of these claims I find as follows:

- a. The tenant claimed \$484 in compensation for a leaking faucet in the toilet and bathtub from January to August (\$242 days x \$2 a day). He testified he asked the landlord to make the repairs on January 5, 2016 but the landlord failed to make the repairs until the summer. The landlord testified that on November 23,

2015 a cleaner reported the hallway carpet outside of the rental unit was damp. A plumber attended and repairs were made. She testified the tenant did not report any deficiencies until the landlord's sanitary inspection in early June. I determined the tenant failed to prove that he reported the leaking problem in January as alleged. There is nothing in writing. He did not make follow ups. The tenant failed to prove this claim.

- b. I dismissed the tenant's claim of \$665 for the reduced value of the tenancy because of the failure of the landlord to replace a functioning fridge (113 days x \$5 a day) as I determined the tenant failed to properly advise the landlord. I accept the documentary evidence of the landlord that the problem was reported to them of July 4, 2016 and the fridge was replaced on July 5, 2016. The landlord acted promptly when advised on the problem and there is no basis for a monetary claim.
- c. The tenant claimed the sum of \$184 for the loss caused after the landlord removed a mirror for 92 days at \$2 a day (not returned until September 20, 2016). I determined the tenant is entitled to \$75 for this claim.
- d. The tenant claimed \$305 for the loss of a washbasin that the tenant alleges was removed for 61 days. The landlord testified it was removed for 30 days. I determined the tenant failed to prove it was removed for the 61 days. I determined the tenant is entitled to \$75 for the loss of use of the washbasin.
- e. The tenant claimed \$305 for the loss of a tub and shower that was removed for 61 days. The purchase order produced by the landlord is dated July 18, 2016. The landlord has not presented evidence as to when the work was completed. However, there is a Notice of Suite Entry for "measuring/patching for bathroom" that indicates the landlord would be entering the suite on August 3, 4 and 5. I determined the tenant is entitled to \$100 for this claim.
- f. The tenant claimed \$305 for the cost of a toilet bowl that was removed for 61 days. I prefer the landlord's evidence that it was removed for 5 days and reinstalled on July 11, 2016. I determined the tenant is entitled to \$75 for this claim. .
- g. The tenant claimed \$3050 for storage of removed toilet and bathtub parts and lack of sanitary requirements. I determined the tenant is entitled to \$150 for the reduced value of the tenancy for this claim.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$475.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$475.

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: November 09, 2016

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Residential Tenancy Branch