



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MNDC, MNSD, OLC, FF, O

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant KP, tenant JM (collectively the "tenants") and the landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenants' application for dispute resolution package and evidence packages. The landlord confirmed that she did not provide any documentary evidence of her own for the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application and subsequent evidence packages.

At the outset of the hearing the parties testified that the tenants vacated the rental unit on October 2, 2016. Consequently the only remedies the tenants are now seeking are compensation with respect to the 2 Month Notice, compensation for damage or loss, return of their security deposit and recovery of the filing fee.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to obtain a return of all or a portion of their security deposit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties testified that the landlord assumed this tenancy in June 2016, when the landlord purchased the property from the previous landlord. The landlord did not enter into a new tenancy agreement with the tenants in June 2016. The parties agreed the tenancy began on August 1, 2009 and rent in the amount of \$906.00 was payable on the first of each month. A security deposit of \$425.00 was remitted by the tenants at the start of their tenancy.

The tenants acknowledged personal receipt of the landlord's 2 Month Notice on August 30, 2016 dated this same date, with an effective date of October 31, 2016. This 2 Month Notice indicates the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

On September 1, 2016 the tenants paid September rent. Following this, on September 17, 2016 the tenants provided the landlord with written notice to end the tenancy effective October 2, 2016. The tenants vacated the rental unit on October 2, 2016.

The landlord acknowledged that she received the tenants forwarding address in writing on October 2, 2016. The landlord recovered the security deposit from the former landlord on November 1, 2016. The landlord retains possession of this deposit.

### Tenants

The tenants seek compensation in the total amount of \$6,118.00.

Specifically, the tenants seek compensation equivalent to one month's rent in the amount of \$906.00 in relation to the 2 Month Notice, compensation equivalent to double the monthly rent in the amount of \$1,812.00 in relation to the 2 Month Notice being issued not in good faith, moving costs in the amount of \$800.00 and the recovery of the new rental unit's security deposit in the amount of \$650.00.

The tenants seek compensation for the loss of quiet enjoyment in the amount \$1,000.00. Tenant KP testified that the landlord restricted use of parking, access to the backyard and common area sitting space. Tenant KP explained the landlord and downstairs tenant continually requested she move her personal belongings from outside and the removal of these belongings restricted her quiet enjoyment of the property.

Tenant KP alleged that the downstairs tenant continually harassed her, removed and damaged her personal belongings. Tenant KP testified that she reported this to the landlord on multiple occasions.

The tenants seek the return of double the amount of their security deposit in the amount of \$850.00 and the return of the \$100.00 filing fee paid for this application.

#### Landlord Reply

The landlord testified that she was new to British Columbia and was therefore unfamiliar with the Residential Tenancy Act. The landlord testified the 2 Month Notice was issued in good faith, the caretaker lives in the lower unit and will be moving into the tenant's vacant rental unit once the rental unit is converted for care taker use. The landlord testified that she did not remove parking, the tenant has 3 vehicles and the tenancy agreement allows for two vehicle parking. In relation to backyard access, the landlord testified that she did not restrict access to the backyard; she only requested the tenant remove personal belongings outside the rental unit. The landlord testified that she obtained a copy of the addendum to the tenancy agreement from the previous landlord. The landlord testified that clause two of the addendum indicates that personal items could not be stored outside as the building was a multi-family dwelling and the tenant must respect the neighbours.

#### Analysis

##### One Month's Rent

Section 50 of the *Act* permits tenants, who have received a 2 Month Notice, to give the landlord at least ten days' notice to end the tenancy earlier than the intended effective date of the landlord's notice. By giving this notice, the tenants do not lose their right to compensation equivalent to one month's rent under the tenancy agreement, as required by section 51 of the *Act*.

I find the tenants complied with the *Act* and issued a valid notice effective October 2, 2016 pursuant to section 50 of the *Act*. In accordance with section 51 of the *Act*, I find the tenants are entitled to compensation equivalent to one month's rent in the amount of **\$906.00**.

##### Double the Monthly Rent

Under section 49 of the *Act*, a landlord may end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith to convert the rental unit for use by a caretaker.

Section 51(2) of the *Act* establishes that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice the landlord must pay the tenants double the monthly rent.

As the effective date of the 2 Month Notice is October 31, 2016 and the hearing was held November 3, 2016, I find a reasonable period has not yet elapsed. Therefore I find the tenants claim for compensation pursuant to subsection 51(2) is premature and dismiss this portion of the tenants claim with leave to reapply.

#### Moving Costs & New Security Deposit

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In relation to the tenants' claim for compensation in the amount of \$800.00 in moving costs and \$650.00 for the security deposit for the new rental, I find the tenants provided insufficient evidence to verify these claims with receipts. For this reason I dismiss this portion of the tenants' claim of compensation.

#### Loss of Quiet Enjoyment

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include 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 and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of interference and failed to take reasonable steps to rectify it would constitute a breach.

A breach of quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act* described above.

It is the tenants' position that their use of common areas was restricted and this in turn infringed on their right to quiet enjoyment.

In relation to the parking issue, I find based on the undisputed testimony of the landlord the tenants had three cars and in accordance with the submitted tenancy agreement the tenants were authorized to park two vehicles only. Therefore I find the landlord did not restrict the service of parking but rather enforced this service as per the tenancy agreement.

In the portion of the tenancy agreement which indicates whether there is an addendum or not, both boxes are checked. During the hearing the parties were questioned on this discrepancy. Tenant KP testified that there was no addendum and that she had checked the box indicating this. The landlord clearly indicated there was an addendum and proceeded to read what she said was a clause from the addendum. Tenant KP did not dispute the box referencing an addendum was checked. I prefer the testimony of the landlord over that of tenant KP in relation to the addendum. I find it probable there was an addendum as per the checked box and the landlord read from it during the hearing. For this reason I find the landlord did not restrict the tenants' access to the backyard by initiating removal of personal property outside the rental unit but instead was following the addendum portion of the tenancy agreement.

Based on the evidence before me I find it probable the tenants and downstairs tenant engaged in some verbal dispute over personal belongings located in areas outside the rental unit, the landlord was made aware of these disputes and the landlord attempted to resolve these disputes by holding meetings to designate personal space. Therefore, I find the tenants failed to provide sufficient evidence to prove the downstairs tenant significantly interfered with their use of the rental unit with frequent and ongoing interference or unreasonable disturbances that the landlord was made aware of and failed to take reasonable steps to address.

Overall, I find the tenants have failed to prove a breach of quiet enjoyment to form the basis of a claim for compensation.

#### Security Deposit

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. Tenants may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenants, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenants double the amount of the security deposit.

The landlord received the forwarding address on October 2, 2016. The landlord did not file an arbitration application to retain the deposit, the landlord did not return the full deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenants are entitled to double the value of their security deposit in the amount of **\$850.00**.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application, for a total award of **\$1,856.00**.

#### Conclusion

I issue a monetary order in the tenants favour in the amount of **\$1,856.00** against the landlord.

The tenants claim for a monetary order for compensation pursuant to subsection 51(2) of the *Act* is dismissed with leave to reapply.

The tenants' claim for a monetary order for moving costs and new security deposit are dismissed without leave to reapply.

The tenants' claim for compensation in relation to a breach of quiet enjoyment 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: November 18, 2016

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Residential Tenancy Branch