



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, DRI, ERP, LAT, MNDC, MNSD, O, PSF, RP, RR, FF

### Introduction

This hearing dealt with the tenant's 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 determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to change the locks to the rental unit pursuant to section 70;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was personally served with the notice of hearing package on October 15, 2016. I accept the undisputed affirmed testimony of the tenant and find that the landlord was properly served in person on October 15, 2016. The landlord is deemed served as per section 90 of the Act on October 15, 2016.

The tenant provided undisputed affirmed testimony that the landlord was served with the amended application for dispute and the submitted documentary evidence on November 17, 2016 in person. I accept the undisputed affirmed testimony of the tenant and find that the landlord was properly served in person on November 17, 2016. The landlord is deemed served as per section 90 of the Act on November 17, 2016.

At the outset the tenant clarified that since filing his application for dispute the tenant has vacated the rental unit on November 30, 2016. The tenant also states that the landlord has returned his security deposit in full. As such, I find that the following portions of the tenant's application no longer applied and shall be considered cancelled by the tenant as there is no further tenancy.

CNL, DRI, ERP, LAT, MNSD, O, PSF, RP, RR

The tenant's application for the remaining portions shall proceed.

MNDC, FF

At the end of the hearing the tenant provided a new mailing address as he has not yet filed a change of address for this application file. The Residential Tenancy Branch File shall be updated to reflect the tenant's new mailing address.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss?  
Is the tenant entitled to recovery of his filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant stated that there was no signed tenancy agreement, but that this tenancy began on June 1, 2015 on a month-to-month basis where the tenant paid a monthly rent of \$700.00 payable on the 1<sup>st</sup> day of each month.

The tenant provided undisputed affirmed testimony that his tenancy was to include satellite tv and laundry. The tenant has provided a copy of the advertisement showing the landlord's included features of the rental unit.

The tenant seeks a monetary claim of \$1,257.20 which consists of:

|          |   |
|----------|---|
| \$656.99 | Estimated Satellite TV charge                                       |
| \$700.00 | Loss of Quiet Enjoyment (Excessive Noise and loss of use (laundry)) |
| \$100.00 | Recovery of Filing Fee  |

The tenant provided undisputed affirmed testimony that during his tenancy of approximately 17 months the landlord never provided satellite tv as promised forcing the tenant to purchase cable tv service. The tenant stated that repeated attempts to get the landlord to provide this service were ignored. The tenant stated that his payment of this service was for approximately \$666.40. The tenant in an effort to be reasonable has provided a similar satellite tv service at \$656.99 and will limit his claim to this amount due to the discrepancy in the type of tv service. The tenant has provided a copy of an online search for satellite tv packages and their costs in support of this claim. The tenant has also submitted a copy of his first invoice for tv service for \$39.20 per month.

The tenant also seeks compensation of \$700.00 for the loss of quiet enjoyment due to excessive noise caused by the landlord and for the loss of use of the laundry. The tenant states that after he moved in the landlord limited his access to the laundry to once per week and during one month no access at all to use the laundry. The tenant states that the landlord would just turn off the electricity for the laundry when the tenant deviated outside of this schedule. The tenant stated that the amount claimed is an arbitrary amount not based upon any actual losses as the tenant stated that he was able to use the laundry machines at his inlaws' home. The tenant stated that he was greatly inconvenience by this.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed affirmed evidence of the tenant that the landlord failed to provide the satellite tv service as promised for the tenancy. The tenant after repeated attempts began paying for his own tv service beginning July of 2015. I am satisfied that the tenant after giving notice to the landlord to correct this incurred an expense. I am satisfied that the tenant's claim for recovery of the added expense of tv was incurred for \$656.99. I also find that as the tenant suffered this loss of service which was part of his tenancy is entitled to compensation for the first month of \$40.00. The tenant has established a claim for the tv service not provided by the landlord of \$696.99.

On the second portion of the tenant's claim for loss of quiet enjoyment and the loss of use of the laundry for \$700.00, I find that although the tenant has provided undisputed affirmed testimony to satisfy me that a loss of quiet enjoyment and a loss of use (laundry) has occurred, the tenant has failed to justify the amount claimed. The tenant has provided testimony that the compensation sought is an arbitrary amount not based upon any actual losses or expenses incurred. The tenant admitted in his direct testimony that no expenses were incurred as he was able to use alternate laundry services at no cost. However, as I accept that the landlord caused the tenant to suffer a loss of quiet enjoyment and loss of use (laundry), I find that the tenant is entitled to a nominal award. I award to the tenant \$40.00 in total for the inconvenience of the loss of use (laundry) and the limited loss of quiet enjoyment of the rental unit.

The tenant has established a total monetary claim of \$736.99.

The tenant having been successful in his application is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$836.99.

The landlord must be served with this order. Should the landlord 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.

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: December 08, 2016

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Residential Tenancy Branch