



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, O, FF

### Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation in the amount of \$3,178.14 and to recover the filing fee.

Only the Tenant appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that she served the Landlord with the Notice of Hearing and her Application on July 22, 2016 by registered mail to the Landlord's mailing address as provided for on the residential tenancy agreement. The tracking number is provided on the unpublished cover page of this my Decision. The Tenant testified that the registered mail package was returned to her as unclaimed. The tracking information provided by Canada Post confirms the Landlord refused delivery on August 20, 2016.

*Residential Tenancy Policy Guideline: 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 26, 2016 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

The tenancy began January 17, 2016. Monthly was payable in the amount of \$925.00, and reduced to \$900.00 per month due to the fact that some of the furnishings were not present.

The Tenant stated that the Landlord offered the rental as fully furnished and indicated to her that this would be a long term rental. The Tenant stated that as she was renting a furnished suite, she disposed of her furniture.

The Tenant testified that she was initially set to move in January 17, 2016 but was not able to do so as the Landlord was having the floors refinished. Despite not being able to live in the rental unit she said she paid the Landlord the sum of \$450.00 for January 2016.

The Tenant further stated that as a result of the rental unit being listed for sale, the Landlord undertook repairs and renovations, all of which affected her ability to enjoy the rental unit. She stated that as well, realtors were “coming and going” which was very disruptive. She also stated that she made sure the rental unit was clean and presentable at all times to facilitate the sale. She stated that she felt like she “set the place up and then sold it for him”.

The Tenant also stated that the Landlord was so focused on selling the rental property that he stopped acting like a Landlord and responding to her basic requests. As an example the Tenant stated that at one point in time the smoke detectors went off and the Landlord would not assist, rather it was the building manager came to help the Tenant. She claimed that the Landlord did not attend to this repair and at the time he sold the property the smoke detectors were still not replaced.

The Tenant also testified that she is a writer and works from home and the constant disruptions by those painting the rental unit and otherwise readying it for sale as well as the realtors, affected her work to such an extent that she went to a different province to get away for a period of time.

She further stated that when the sale of the property closed, in late July or early August, the Landlord removed all of the furniture despite the fact that she rented the unit as furnished.

The Tenant confirmed that the new owners are now her Landlords and she has an excellent relationship with them.

On the Monetary Order Worksheet the Tenant claimed the following:

Compensation for 3 month's rent at \$900.00 per month	\$2,700.00
½ rent paid for January 2016 when the rental unit was not ready for occupation.	\$450.00
Registered mail	\$28.14
<b>TOTAL</b>	<b>\$3,178.14</b>

### Analysis

Based on the undisputed testimony and evidence of the Tenant and on a balance of probabilities, I find as follows.

The Tenant stated that she paid \$450.00 in rent for January 2016, yet was unable to reside in the rental unit due to the floors being redone. As she was denied any use of the rental unit, I find she is entitled to full recovery of the **\$450.00** paid for rent for January 2016.

The Tenant further testified that from the date she moved into the rental unit, in February of 2016, until it was sold on or about June 24, 2016 she was regularly disrupted by persons employed by the Landlord to attend to repairs and renovations, as well as showings of the rental unit for the purposes of sale. The Tenant stated that the disruptions were ongoing and at times unexpected as she was given insufficient notice or no notice at all. The Tenant seeks compensation equivalent to three months' rent as compensation for the Landlord's breach of her right to quiet enjoyment during this time period.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

#### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

*Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment* provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

I find, based on the Tenant's undisputed testimony and evidence that her right to quiet enjoyment was breached by the frequent and ongoing interference by persons acting on behalf of the Landlord in relation to the sale of the rental unit. The Tenant submitted that she was unable to work, or entertain company during these times given that she was seldom informed of when these individuals would be attending the residence. I further accept her evidence that she "staged" the rental unit and made her best efforts to facilitate its sale such that she was not able to enjoy the rental unit to its fullest extent. I accept the Tenant's evidence that she communicated her concerns to the Landlord and he did not take steps to address her concerns regarding the frequent interruptions, or basic maintenance as he was focussed on selling the property.

The Tenant testified that from the time she moved into the rental unit in February of 2016 to the time it sold, on approximately June 24, 2016, these disruptions occurred. She seeks the sum of \$2,700.00, representing three of the five months she paid rent, or return of 60% of the rent she paid. As the Landlord failed to attend the hearing, this amount was undisputed. Based on her testimony and written submissions, I find she is entitled to the amount claimed.

The Tenant sought reimbursement of the cost of registered mailing. As this is not recoverable under the *Residential Tenancy Act*, I dismiss her claim in this regard.

Having been substantially successful I grant her recovery of the \$100.00 filing fee.

The Tenant is entitled to compensation in the amount of **\$3,250.00** calculated as follows:

Compensation for 3 month's rent at \$900.00 per month	\$2,700.00
½ rent paid for January 2016 when the rental unit was not ready for occupation.	\$450.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$3,250.00</b>

The Tenant is granted a Monetary Order in the amount of **\$3,250.00**. She must serve this Monetary Order on the Landlord as soon as possible and may, if necessary, file and enforce it in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Tenant is entitled to the sum of **\$3,250.00** representing reimbursement of the \$450.00 paid for January 2016 when she was unable to move into the rental unit as the floors were being done as well as \$2,700.00 for breach of her right to quiet enjoyment from February 2016 to June 2016 when the rental unit was being renovated and shown for sale and recovery of the filing fee.

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: January 27, 2017

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Residential Tenancy Branch