



# 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 was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on August 24, 2016. The Tenant filed seeking a \$1,500.00 Monetary Order for: for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for other unspecified relief; and to recover the cost of his filing fee.

The hearing was conducted via teleconference and was attended by the Tenant. No one appeared on behalf of the Landlord. The Tenant provided affirmed testimony that he served the Landlord with copies of his application for Dispute Resolution; the Notice of hearing documents; and with his evidence by registered mail on August 30, 2017.

The Tenant read the Canada Post tracking number into evidence, as listed on the front page of this Decision. I heard the Tenant state that he checked the Canada Post tracking website which indicated his registered mail package was signed received by the Landlord on September 12, 2016. Based on the foregoing, I find pursuant to section 62 of the *Act*, the Landlord was sufficiently served notice of this application and proceeding, in accordance with section 89 of the *Act*. As such, I continued to hear the undisputed evidence of the Tenant, in absence of the Landlord.

### Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation?

### Background and Evidence

The Tenant testified that on May 31, 2016 he entered into a written fixed term tenancy agreement with the Landlord to rent the basement suite in the Landlord's home. That tenancy was to commence on July 1, 2016 for a six month term. Rent of \$600.00 was payable on the first of each month and on May 31, 2016 the Tenant paid \$300.00 as the security deposit.

I heard the Tenant state the Landlord did not provide him with a copy of the written tenancy agreement. However, she did provide him with a written receipt for the security deposit; as provided in evidence.

The Tenant submitted the Landlord called him on June 28, 2016 to tell him they decided to sell the rental property. He said the Landlord told him their real estate agent did not want the Landlord to rent out the basement as that could prevent the house from selling quickly. The Tenant asserted he attempted to negotiate with the Landlord to let him move in, even for only one month, to allow him time to find another place to rent. He stated he was moving from another city as he had acquired work near the location of the rental unit.

The Tenant testified the Landlord refused to negotiate to allow him to move into the rental unit. The Landlord returned his \$300.00 security deposit later that day, June 28, 2016, by email transfer; as per the copy submitted into evidence.

The Tenant argued he suffered stress when trying to find a place to live with such short notice; as well as having to take time off work. He stated he lost one day's pay, a ten hour shift at \$26.57 per hour, due to the Landlord cancelling his tenancy without proper notice. As a result the Tenant was seeking \$1,500.00 which is comprised of compensation equal to two month's rent (2 x \$600.00) plus \$300.00 for ending the tenancy without notice; for stress caused by the Landlord's actions; and lost wages.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

I accept the Tenant's undisputed submission that he and the Landlord entered into a written tenancy agreement. However, in absence of a written agreement in evidence, I find that the terms of the agreement, whether they were verbal or written, as submitted by the Tenant are recognized and enforceable under the *Residential Tenancy Act*, pursuant to section 62 of the *Act*.

When determining the merits of the monetary amount claimed by the Tenant I considered the following sections of the *Residential Tenancy Act* (the *Act*), and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, 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 in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 6 states, in part, when considering a claim for loss of quiet enjoyment, "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".

In addition, Policy Guideline 6 provides that an arbitrator may award aggravated damages where a serious situation has occurred or been allowed to occur. Aggravated damages are damages which are intended to provide compensation to the applicant rather than punishing the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The undisputed evidence was the parties entered into a written tenancy agreement, for a 6 month fixed term, commencing July 1, 2016. The Landlord accepted the \$300.00 for the security deposit on May 31, 2016. On June 28, 2016 the Landlord breached that fixed term agreement, denied the Tenant access to the rental unit, and unilaterally cancelled the tenancy agreement.

Although the Landlord returned the security deposit to the Tenant on June 28, 2016, I do not consider the Tenant's action of accepting the return of that deposit to be an agreement to end the tenancy. Rather, I accept the Tenant did was what reasonable to try and mitigate his loss by attempting to negotiate a shorter tenancy with the Landlord; until such time as he could find alternate accommodations, pursuant to section 7 of the *Act*; however, the Landlord refused. It should be noted that pursuant to section 16 of the *Act*, the rights and obligations to this tenancy remained in full force and effect until such time as the tenancy ended in accordance with the *Act*.

I find the Landlord was negligent in changing her mind about fulfilling her obligations to the tenancy agreement after mutually agreeing to those terms and accepting the security deposit. That negligent action led to the Landlord's deliberate and wilful act of unilaterally cancelling the tenancy agreement in contravention of the *Act*.

While there are provisions under sections 46, 47, 48, and 49 of the *Act*, whereby a landlord may end a tenancy for specific reasons and with specific notice and compensation, there is no provision in the *Act* which allows a landlord to simply cancel a tenancy agreement unilaterally without providing the Tenant with proper notice; without cause; and/or without compensation as required in specific circumstances. As such, I find the Tenant is entitled to monetary compensation as a result of the Landlord's breach.

In determining the amount of compensation the Tenant is entitled to, I have considered that the Landlord's breach caused the Tenant to suffer a full loss of quiet enjoyment in breach of section 28 of the *Act*. That loss was equal to 100% of the value of the six month fixed term tenancy agreement, as the Tenant had reason to believe that he would be able to occupy the rental unit for the full term of the tenancy agreement.

In addition, there was sufficient evidence before me to prove the Tenant suffered distress as well as the loss of one day's pay caused directly by the Landlord's action of unilaterally cancelling the tenancy agreement in breach of the *Act*.

I have also considered that if the Landlord ended this tenancy due to the house being listed for sale and a purchaser wanted to occupy the rental unit pursuant to section 49 of the *Act*, the Landlord would have had to serve the Tenant a two month notice to end tenancy for landlord's use and would have been required to provide the Tenant compensation equal to one month's rent.

That 2 Month notice could not have been effective until the end of the fixed term which in this case was December 31, 2016; 6 months after the tenancy started. If the unit was not occupied by the purchaser, the Landlord would have also been subject to paying the Tenant additional compensation equal to two months' rent, pursuant to section 51 of the *Act*.

Based on the above, I concluded the Tenant's request for compensation of \$1,500.00 had merit. Accordingly, I granted the Tenant's application for loss of quiet enjoyment;

aggravated damages for the duress caused by the Landlord's breach; and lost wages for a total award of **\$1,500.00** as claimed, pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the *Act*.

The Landlord is hereby ordered to pay the Tenant the sum of **\$1,600.00** (\$1,500.00 + \$100.00) forthwith.

In the event the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for **\$1,600.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

### Conclusion

The Tenant was successful with his application and was granted a Monetary Order in the amount of \$1,600.00.

This decision is final, legally binding, and 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: February 28, 2017

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Residential Tenancy Branch