



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0838436 BC LTD

## **DECISION**

Dispute Codes      OPR, MNDC, OLC, ERP

### Introduction

This was an application by the tenant under the *Residential Tenancy Act* (the “Act”) for:

- cancellation of the landlords’ 10 Day Notice to End Tenancy Unpaid Rent or Utilities dated January 6, 2017 (“10 Day Notice”) pursuant to s. 46(4);
- a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement pursuant to s. 67;
- an order that the landlords comply with the Act, regulations, or tenancy agreement pursuant to s. 62(3); and
- an order that the landlords make emergency repairs.

The tenant attended the hearing. The hearing process was explained. The tenant provided affirmed testimony and had the opportunity to present evidence orally and in written and documentary form, and make submissions and to ask questions.

As the individual landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution and supporting documentary evidence was considered. The tenant provided affirmed testimony that the Notice of Hearing, Application, and documentary evidence were served in one package via registered mail to the landlords, at the mailing address provided on the 10 Day Notice, after the Notice of Hearing document was issued on January 16, 2017. I accept that the landlords were sufficiently served with these materials as required by and by operation of sections 89 and 90 of the Act.

At the outset of the hearing, the tenant advised that he had vacated the rental unit and withdrew his requests for all relief except for the monetary order under s. 67. As a result, I have not considered the tenant’s other requests.

The tenant provided a copy of the 10 Day Notice and a copy of the tenancy agreement at my request after the hearing. The 10 Day notice is dated January 6, 2017, with an effective date of January 16, 2017, and the tenant acknowledges receipt on January 6, 2017. It alleges \$1,840.00 owing as of January 1, 2017.

### Issues to be Decided

Is the tenant entitled to a monetary order?

### Background and Evidence

A copy of the tenancy agreement was evidence. A month to month tenancy began on April 1, 2014. Monthly rent of \$950.00 was due on the first day of each month. Storage is included under the agreement.

The tenant testified that at some point rent was reduced by \$30.00 per month in return for the tenant's vacuuming of common areas. He paid a security deposit of \$475.00 at the start of the tenancy which has since been applied towards rent. He also paid both first and last months' rent at the beginning of the tenancy and asked that his "last month rent" deposit be applied toward his December rent. The parties are cautioned that an additional deposit of "last month's rent" is not permissible under the Act: a landlord may not charge more than ½ month's rent as a security deposit.

The tenant advised that the tenancy has ended and that he vacated the unit on or before February 1, 2017.

The tenant gave additional undisputed sworn testimony regarding the tenancy. He stated that there was some uncertainty as to who owned the rental unit at issue. At the beginning of the tenancy, the individual landlord asked him to deposit his rent to various different accounts at various times. At some point a credit union with a mortgage on the property served the tenant with some legal documents. After that point the tenant started making his rental payments directly to the credit union. In or about July of 2016 the individual landlord advised the tenant that he was "walking away" from the mortgage.

In late fall the tenant understood the unit was going to be sold. Although he did not receive a 2 Month Notice for Landlord's Use he believed he was entitled to withhold rent in January as a result of the impending sale and did so. Soon after the "bank" called inquiring after the rent. The tenant then learned that the property had not sold and that

he did owe January's rent. As a result he mailed a cheque for January's rent to the landlords (not the bank).

The rental unit was approximately 1,300 square feet. A copy of a real estate listing this was included in evidence. The tenant testified that the storage space comprised approximately 220 square feet of the overall square footage and was located in the basement of the unit. The tenant's claim for loss of storage space is calculated at \$100.00/month for the 24 months the landlord was using the storage.

The tenant further stated that beginning with the tenancy, and until approximately July of 2016, the landlord was using the majority of the tenant's storage space (approximately 130 of the 220 square feet available). The landlord's belongings include a large television, furniture, two bicycles, many banker's boxes, and various other items and occupied over half of the available storage. The tenant asked the individual landlord many times over the course of the tenancy, in person, over the phone, and by email, to remove his belongings. The tenant testified that this landlord was usually in Mexico and was not responsive to his requests until July of 2016.

Towards the end of the tenancy the individual landlord emailed the tenant to advise the he would not be returning the damage deposit. The tenant reduced August's rent by the amount of the deposit as a result.

### Analysis

Based on the undisputed documentary evidence and testimony of the tenant provided during the hearing, and on the balance of probabilities, I find that the tenant was deprived of the use of the space for which he paid.

The tenant provided undisputed evidence that he paid \$950.00 monthly in return for the use of a rental unit of approximately 1300 square feet, including two bedrooms and storage. Storage is explicitly included in the tenancy agreement. The storage available was approximately 220 square feet in total, more than ½ of which was occupied by the landlord's belongings for approximately 26 months. The monthly rent divided by the square footage of the unit overall means the unit was renting for about \$0.73/square foot/month. The landlord occupied approximately 130 square feet of the unit for 26 months, amounting to \$2,469.00.

Sections 67 of the Act allows me to make a monetary order where loss has been suffered as a result of the failure of a party to comply with the Act, Regulation or tenancy agreement.

Accordingly, I make a monetary order in the tenant's favour for the amount claimed: \$2,400.00.

### Conclusion

The tenant's application is allowed.

As the tenant's application is successful, I grant him the cost of the filing fee in the amount of \$100.00 pursuant to s. 72(1) of the Act.

I issue a monetary order for the tenant in the total amount of **\$2,500.00**. The landlords must be served with this order as soon as possible. Should the landlords fail to comply with the order, it 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 s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: February 10, 2017

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Residential Tenancy Branch