



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference on March 27, 2017 and was adjourned to May 4, 2017 by my Interim Decision dated March 29, 2017. This Decision must be read in conjunction with the Interim Decision.

Both parties called into the hearings and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

By my Interim Decision the Landlord was ordered to provide a historical title search to the Branch and to the Tenant's advocate. I confirm that this information was provided to the Branch and was reviewed in making this Decision. The Tenant's advocate stated that he did not receive this information. I informed him that the information confirmed that the Landlord's father, D.H.R. was on title to the rental property from August 9, 2012 to November 9, 2015. A letter signed by the Landlord and D.H.R. and supporting documentation indicates that the change in title was as a result of D.H.R.'s credit effects of a bankruptcy assignment. The Tenant and his advocate confirmed they were prepared to proceed with the hearing and did not request a further adjournment to review this evidence.

The parties agreed that all other evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

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

### Issue to be Decided

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

### Background and Evidence

The Tenant testified that he originally lived in the basement suite of the rental home beginning in 2012. He stated that when he moved to the upper unit in May of 2015, he signed a tenancy agreement.

The Tenant confirmed that he paid rent in the amount of \$1,100.00 payable on the 1<sup>st</sup> of the month.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on June 1, 2016 (the "Notice"). A copy of the Notice was provided in evidence. The Landlord failed to indicate his reasons for issuing the Notice; the Tenant was unaware that the Notice was defective, and moved out of the rental unit on August 1, 2016.

The Tenant testified that he paid the June and July 2016 rent. He further testified that the Landlord failed to provide him with the free month's rent as provided for by the *Residential Tenancy Act*.

The Tenant stated that he tried to inform the Landlord about his right to a free month's rent by pointing out this information on the second page of the Notice, to which the Landlord replied that if he didn't pay the rent he would throw all his property out on the front lawn.

The Tenant stated that the Landlord told him that he was ending the tenancy as he wanted more money for the suite and further told the Tenant that he could stay in the rental unit if he was willing to pay an extra \$500.00 per month. The Tenant stated that the Landlord told him that if wasn't able to pay the rent he would get new tenants who would.

The Tenant confirmed that he was not aware that this was an inappropriate reason for ending a tenancy.

The Tenant stated that the Landlord then rented the property for more than the amount he paid.

Introduced in evidence by the Tenant was a copy of an ad placed by the Landlord for the rental unit wherein the Landlord sought the sum of \$2,000.00 in addition to utilities.

In terms of his claim for loss of quiet enjoyment, the Tenant testified as follows.

The Tenant testified that the Landlord moved his RV onto the property during the last few days of May 2016.

The Tenant stated that the Landlord then entered the rental unit whenever he wanted, including going upstairs and showering in the Tenant's bathroom. The Tenant found out about this from the downstairs tenants who told him this was occurring when he was away at work. A letter from the downstairs tenants was also provided in evidence confirming this. The Tenant said that he felt like his privacy was completely invaded. The Tenant further stated that he felt like he could not say anything as he didn't want to create a hostile environment for his daughter, who was three years old at the time.

The Tenant also testified Landlord also had a pit bull in the yard which was off leash. The Tenant confirmed that he also has pets and he was worried for their safety. He said that the pit bull did not attack his dog, but it did attack a dog that the downstairs' tenants were looking after.

The Tenant also testified that the Landlord also grew marijuana in pots beside his RV. The Tenant stated that to his knowledge the Landlord did not have a license to grow marijuana for personal use. Photos submitted by the Tenant show these plants.

The Tenant confirmed that he did not let his daughter go into the area where the RV was because of the pit bull and the marijuana plants.

The Tenant's Advocate submitted that the relationship between the parties was good until the Landlord moved onto the property. He stated that the relationship deteriorated due to the Landlord's marijuana plants, the dog, the Landlord entering the rental unit without notice and using the Tenant's bathroom and toiletries without the Tenant's notice or consent. The Tenant's Advocate also claimed that the Landlord also removed the air conditioner causing the unit to overheat.

Introduced in evidence was a copy of text communication between the parties wherein the Landlord writes:

“Hey [Tenant’s name]. . Wen u out rent in put 200 less in for me and my dad invading ur space. I’ll be up in 3 hrs so I’ll take cash or in my act. Thx”

[Reproduced as Written]

The Landlord also submitted letters from his father, who wrote that he gave permission to the Landlord to use the upstairs residence as needed. The Tenant and his Advocate stated that they did not receive any evidence from the Landlord. As noted previously in this my Decision, I offered the Tenant an adjournment to give them time to consider the Landlord’s evidence. They declined my request for an adjournment and as such, I read to them the contents of the letters submitted by the Landlord in response to the Tenant’s claims.

The Landlord testified as follows.

He stated that he did not pay the Tenant his free month’s rent as provided by section 51 of the *Act*; he confirmed that he is now aware that he should have done so.

The Landlord stated that after the tenancy ended he moved into the downstairs for a period of time and he now has the house to himself. He denied renting the unit out to others.

The Landlord further stated that when he moved his RV onto the property, he spoke to all the renters, (both upstairs and downstairs) who confirmed they were agreeable to him moving his RV onto the property. He further confirmed that he did not give the renters a rent reduction for his use of the rental property.

The Landlord also confirmed that he did not give the Tenant a reduced amount of rent for the use of the Tenant’s laundry or bathroom. He stated that his father (who he claimed also owned the property) gave him permission to use these facilities. The Landlord also stated that his father continues to have a bedroom at the rental house and while he works in Alberta, he has the ability to return to the residence as and when he pleases. He claimed that as his father is an owner of the property and shared a bathroom and kitchen with the Tenant, the *Act* does not apply to this tenancy.

In reply to the Landlord’s submissions, the Advocate stated that the Tenant and the Landlord’s father are friends. The Advocate further stated that the Tenant allowed the Landlord’s father to use the spare bedroom on occasion when he was in the area but that this was separate from any dealings he had with the Landlord.

The Tenant stated that the Landlord's father was last at the property in July of 2016.

### Analysis

I will first deal with the issue of jurisdiction, as the Landlord has submitted the *Act* does not apply.

Section 4(c) of the *Act* provides as follows:

#### **What this Act does not apply to**

##### **4 This Act does not apply to**

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The evidence submitted by the Landlord indicates the Landlord's father was an owner of the property for a period of time. As he shared the kitchen and bathroom with the Tenant, it is possible that pursuant to section 4(c) the *Residential Tenancy Act* did not apply to the parties during the period of time in which the Landlord's father shared the residence with the Tenant, and was a registered joint owner of the property.

That said, the Land Title Search submitted in evidence confirms the Landlord's father ceased to be an owner November 9, 2015. The period of time in which the Tenant's claim for breach of quiet enjoyment arose began at the end of May 2016 and continued until the tenancy ended. As well, the Notice was issued June 1, 2016 at a time when the Landlord, D.R.R., was a sole owner. I therefore find that at the time the Notice was issued, the *Act* applied.

I will now deal with the Tenant's monetary claim.

The Tenant seeks compensation pursuant to section 51 of the *Residential Tenancy Act* which reads as follows:

#### **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The Landlord conceded that he did not pay the Tenant his one months' rent pursuant to section 51(1). As he issued a Notice pursuant to section 49, the Tenant is entitled to these funds. Accordingly, I grant the Tenant his request for the equivalent to one months' rent as compensation pursuant to section 51(1). As the Tenant only paid **\$900.00** in rent for July 2017, he is entitled to the sum of **\$900.00**.

The Tenant submits that he should also receive two months' compensation pursuant to section 51(2). As noted, the Notice fails to indicate the reasons for issuing the Notice. While the Tenant alleges the Landlord ended the tenancy for the purposes of renting the unit at a higher price (which is not a permitted reason for issuing a Notice pursuant to section 49), and evidence related to advertising of the unit support such a finding, the Notice fails to indicate the *stated purpose for ending the tenancy*. As such I am unable to find that "*steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice*" as is required for a finding under section 51(2). Accordingly, I dismiss the Tenant's claim for two month's rent pursuant to section 51(2).

The Tenant also seeks \$1,100.00 in compensation for loss of quiet enjoyment due to the Landlord moving onto the rental property and using the facilities in the Tenant's rental unit without his knowledge and consent during the months June and July 2016. This sum represents half of the rent paid.

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.

...

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant is entitled to the \$1,100.00 claimed for breach of quiet enjoyment.

Although the downstairs renter may have agreed to the Landlord residing in his recreational vehicle on the property, they were not impacted in the same way as the Tenant. I accept the Tenant's evidence that he was not able to allow his pet or his small child to enjoy the outside as he was concerned with the Landlord's dog, as well as the impact of the Landlord growing marijuana. I further find that the Landlord, in entering his rental unit, using his laundry facilities and bathroom facilities significantly breached the Tenant's right to reasonable privacy and exclusive possession of the rental unit.

Notably, the Landlord conceded that he and his father impacted the tenancy in the text message he sent to the Tenant wherein he wrote, in part, as follows:

“...Wen u out rent in put 200 less in for me and my dad invading ur space. I’ll be up in 3 hrs so I’ll take cash or in my act. Thx”

I find this breach to be so egregious that I award the Tenant recovery of one half of the rent paid for both June and July 2016.

The Tenant also seeks punitive damages in the amount of \$1,000.00. Such damages are not recoverable under the *Act*.

The Tenant is entitled to recovery of the **\$100.00** filing fee.

### Conclusion

The Tenant is entitled to the sum of **\$2,100.00** representing one months’ compensation pursuant to section 51(1) of the *Act* (less \$200.00) the sum of \$1,100.00 as compensation for breach of his right to quiet enjoyment and recovery of the filing fee. The Tenant is granted a Monetary Order in this amount. The Order must be served on the Landlord by the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: June 2, 2017

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Residential Tenancy Branch