



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes: CNL MNDC, OLC, MNSD, FF

## Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated August 3, 2017
- b. An order for a monetary order in the sum of \$2000
- c. A repair order
- d. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- e. An order suspending the landlord's right to enter the rental unit.
- f. An order allowing access to (or from) the unit for the tenant or the tenant's guests
- g. An order allowing the tenant to reduce rent for repairs, services agreed upon but not provided.
- h. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the two month Notice to End Tenancy was personally served on the Tenant on August 4, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served the landlord on August 10, 2017. With respect to each of the applicant's claims I find as follows:

## Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated August 3, 2017?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to a repair order
- d. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- e. Whether the tenant is entitled to a an order suspending the landlord's right to enter the rental unit.

- f. Whether the tenant is entitled to a an order allowing access to (or from) the unit for the tenant or the tenant's guests
- g. Whether the tenant is entitled to a an order allowing the tenant to reduce rent for repairs, services agreed upon but not provided.
- h. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on August 1, 2017 when the parties entered into an oral month to month tenancy agreement. The tenancy agreement provided that the tenant(s) would pay rent of \$800 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$400 at the start of the tenancy.

In a decision dated July 10, 2017 I ordered that a two month Notice to End Tenancy dated May 4, 2017 be cancelled as the landlord testified that he needed the rental unit to house a cousin who is not a close family member as defined by the Act for the purpose of ending a tenancy.

The agent for the landlord the basis for the August 3, 2017 two month Notice to End Tenancy is that the rental unit is needed to house the landlord's elderly father who is in ill health. The father is presently living upstairs with the family but finds the going up and down the stairs very difficult. The landlord provided a letter from the father's physician that states in part:

"...He suffers from several medical problems. This includes severe osteoarthritis of his both knees. He is on the waiting list for total knee replacement but we do not know when his surgery is going to be. In addition to that, he suffers from chronic obstructive pulmonary disease. He also has a coronary artery disease. With that, he is short of breath even at rest. Presently he lives upstairs in the house of his son. This involves going up to 15 steps of stairs. He has a major difficulty going upstairs everyday. In my opinion he should be living on the ground floor. He tells me that they do have a basement suite that is only 2 steps from the outside. I recommend to him very strongly that he lives in the basement suite that is essentially on the ground floor. If he keeps going up stairs he runs a risk of falling and hurting himself seriously or possibly of having potential for a heart attack.

The tenant did not dispute this medical evidence or that the landlord's father was presently living upstairs.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Analysis – Application to Cancel the 2 month Notice to End Tenancy:

After carefully considering all of the evidence I determined the landlord has a good faith intention to end the tenancy on the basis that the rental unit will be occupied by a close family member. A father is a sufficiently close family member to qualify under section 49 of the Act. The medical evidence provided by the landlord as to the condition of his father is compelling and is sufficient reason for the landlord to be entitled to regain possession of the rental unit. The tenant did not dispute the medical evidence presented or that the father has problems going up and stairs.

#### Determination and Orders:

I determined there was sufficient grounds to end the tenancy even though this is the second 2 month Notice given in a short period of time. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy dated August 3, 2017. I order that the tenancy shall end on October 31, 2017.

#### Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective October 31, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

#### Tenant's Application for a Monetary Order and for a Reduction of Rent:

Policy Guideline #16 includes the following:

##### **“B. DAMAGE OR LOSS**

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

##### **C. COMPENSATION**

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

...

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

#### **D. AMOUNT OF COMPENSATION**

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.”

With respect to each of the tenant's claims for compensation I find as follows:

- a. The tenant testified that “all utilities were included with the rent.” The landlord disputed this saying that cablevision, wireless internet and laundry were not included with the rent. The tenancy agreement was oral. However, I accept the testimony of the tenant to that of the agent for the landlord when he testified the landlord provided him with the wifi

password and cable TV programming code and he used these services to the end of July when the landlord cut them off. Further I accept the evidence of the tenant that he was given access to use the laundry once a week.

However the tenant failed to provide sufficient evidence as to the value of these services. In the absence of evidence as to quantum I determine the tenant is entitled to nominal damages in the sum of \$50 per month for August, September and October for a total of \$150 for the cablevision. I further determined the tenant is entitled to nominal damages in the sum of \$50 per month for August, September and October for the loss of the internet totaling \$150.

I dismissed the tenant's claim of \$100 a day for business interruption because of the loss of the internet for the following reasons:

- The tenant failed to provide sufficient evidence to provide any loss of business income.
  - Further, this is a residential tenancy situation. I determined that a business loss is not a foreseeable loss.
  - Finally, the tenant failed to mitigate his loss by getting his own internet if he was experiencing such a loss.
- b. The tenant claimed \$200 per month for laundry. However, he failed to provide evidence as to quantum or how often he had to take his clothes to a laundry. I determined he is entitled to \$50 a month in nominal damages for a total of \$150 for the failure of the landlord to reinstate the laundry service.
- c. I determined the tenant is entitled to \$200 for the loss of quiet enjoyment. The video indicates the landlord acted inappropriately in early August after he received the decision from the previous arbitration. The tenant further testified the landlord threatened to cause him bodily harm and insulted him using abusive language. The tenant called the police. I determined this amounted to harassment and compensation in the sum of \$200 is appropriate.
- d. I dismissed the claim for aggravated damages and the tenant failed to provide sufficient proof to establish that such an award was warranted.

In summary I determined the tenant has established a monetary claim against the landlord in the sum of \$650 plus \$100 for the cost of the filing fee for a total of \$750.

Setoffs:

The tenant acknowledged has not paid the rent for the months of September and October 2017 and the sum of \$1600 is owed. .

However, as the landlord served a two month Notice to End Tenancy on the Tenant the tenant is entitled to the equivalent of one month rent free under section 51 of the Act. Thus the tenant is entitled to apply his right to the equivalent of one month's rent leaving a balance owing to the landlord of \$800. Further section 72 of the Residential Tenancy Act provides as follows:

Director's orders: fees and monetary orders

'72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted  
(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

I order that the \$750 owed by the landlord to satisfy the tenant's monetary claim be applied to the rent owing leave a balance of rent owed from the tenant to the landlord in the sum of \$50.

As the tenancy is coming to an end on October 31, 2017 I dismissed the following claims made by the tenant as they become moot:

- a. A repair order
- b. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- c. An order suspending the landlord's right to enter the rental unit.
- d. An order allowing access to (or from) the unit for the tenant or the tenant's guests
- e. An order allowing the tenant to reduce future rent for repairs, services agreed upon but not provided.

Conclusion:

In summary I dismissed the tenant's application to cancel the two month Notice to End Tenancy and I granted an Order of Possession effective October 31, 2017. I ordered the landlord pay to the Tenant compensation in the sum of \$750 such sum shall be applied against outstanding rent leaving a balance of rent owed in the sum of \$50.

**This decision is final and binding on the parties.**

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: October 10, 2017

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Residential Tenancy Branch