



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Fraserside Community Service  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNL

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to cancel a Two Month Notice to End Tenancy. The Tenant stated that she did not intend to apply to cancel a Two Month Notice to End Tenancy. As the Tenant did not wish to pursue the application to cancel a Two Month Notice to End Tenancy, that matter was not discussed at the hearing.

The Tenant stated that she intended to apply for compensation of \$2,500.00 because the Landlord required her to discard a variety of personal belongings. The Tenant submitted a written submission that explains she wants compensation of \$2,500.00 for complying with the Landlord's demands to clear property from her rental unit.

The male Agent for the Landlord stated that the Landlord understood the Tenant was seeking compensation of \$2,500.00 for personal property she disposed of and that the Landlord is prepared to respond to that issue at these proceedings.

As the Landlord is prepared to respond to the claim for \$2,500.00, I amend the Tenant's Application for Dispute Resolution to include a monetary claim for \$2,500.00.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Tenant submitted to the Residential Tenancy Branch on October 30, 2017 were personally delivered to the Landlord's business office. The male Agent for the Landlord acknowledged receipt of these documents/photographs and the evidence was accepted as evidence for these proceedings.

On November 06, 2017 the Landlord submitted 31 pages of evidence to the Residential Tenancy Branch. The male Agent for the Landlord stated that this evidence was personally served to the Tenant on November 03, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled compensation because she disposed of personal property?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on October 15, 2005. The Tenant stated that she has moved to another home but she still has some property in the unit, which she expects will be removed in the near future.

The Landlord and the Tenant agree that agents for the Landlord inspected the rental unit on March 03, 2017.

The male Agent for the Landlord stated that when the rental unit was inspected on March 03, 2017 he determined personal property inside and outside of the rental unit was being stored in a manner that rendered the unit unsafe. His observations are recorded in the email dated March 06, 2017, which was submitted in evidence by the Landlord.

The Landlord and the Tenant agree that the Landlord sent the Tenant a letter, dated March 07, 2017, in which the Landlord informed the Tenant of the results of the inspection and directed the Tenant to take a variety of actions that would, in the opinion of the Landlord, render the unit healthy and safe. A copy of this letter was submitted in evidence.

The Landlord and the Tenant agree that agents for the Landlord inspected the rental unit again on March 30, 2017.

The male Agent for the Landlord stated that when the rental unit was inspected on March 30, 2017 a significant improvement was noted, however some issues remained outstanding. A copy of this letter was submitted in evidence.

The Landlord and the Tenant agree that the Landlord sent the Tenant a letter, dated April 03, 2017, in which the Landlord informed the Tenant that further action was required.

The male Agent for the Landlord stated that when the rental unit was inspected on March 30, 2017 the Tenant would not allow them to inspect two of the bedrooms. The Tenant denies this allegation.

The Tenant stated that she discarded a large amount of personal property in an attempt to comply with the Landlord's directions. She stated that she contacted the Residential Tenancy

Branch prior to disposing of her personal property and was informed that the Landlord could not require her to dispose of personal property but she complied with the directions because she feared she would be evicted from the rental unit.

The Tenant contends that she felt bullied into disposing of her personal property and that she was insulted by the comments regarding the condition of her home.

The Tenant stated that in her opinion the rental unit did not have an excessive amount of property in it and it was not maintained in an unhealthy manner. She submitted several undated photographs of the rental unit which she stated were taken on March 03, 2017.

The male Agent for the Landlord stated that he does not know when the photographs submitted by the Tenant were taken, however they do not represent the condition of the rental unit at the time of the inspections on March 03, 2017.

The Landlord submitted one photograph that was taken from the exterior of the rental unit. The male Agent for the Landlord stated that the photograph shows personal property piled up in a bedroom of the unit. The Tenant stated that the photograph shows her sons bunkbed beside the window.

Analysis:

As the Tenant did not intend to apply to cancel a Two Month Notice to End Tenancy and she does not wish to pursue that application, I dismiss her application to cancel the Two Month Notice to End Tenancy that was submitted in evidence.

As the application to cancel the Two Month Notice to End Tenancy was dismissed and the notice complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 32(2) of the *Residential Tenancy Act (Act)* stipulates that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

There is nothing in the *Act* that prevents a landlord from asking a tenant to comply with section 32(2) of the *Act* if the landlord believes those standards are not being met. On the basis of the testimony of the male Agent for the Landlord and the documentary evidence submitted by the Landlord, I find that the Landlord believed that the amount of property in the rental unit was unsafe and was a potential health hazard.

In the event the Tenant did not agree with the Landlord's conclusion that she was not complying with section 32(2) of the *Act*, she had the option of simply refusing to comply with the direction to remove some of her personal property or to file an Application for Dispute Resolution to have

a third party determine whether the property needed to be removed.

Had the Tenant not complied with the Landlord's directions to remove some of her personal property, the Landlord had the option of disregarding the matter or serving the Tenant with notice to end the tenancy as a result of the condition of the rental unit. I note that the Landlord did not have the right to remove the Tenant's personal property without her consent and that they did not attempt to do so.

In the event the Landlord did serve the Tenant with a notice to end tenancy as a result of the condition of the rental unit, the Tenant would have the right to dispute the notice to end tenancy, in which case a third party would determine whether personal property was being stored in an unsafe manner.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers a loss as a result of the landlord this *Act*, the regulations or a tenancy agreement.

I accept that the Tenant discarded some of her personal property at the direction of the Landlord. I find, however, that the Tenant is not entitled to compensation for the property because the Landlord did not breach the *Act* when the Landlord asked the Tenant to do so. I therefore dismiss the Tenant's application for compensation for her personal property.

Section 7(2) of the *Act* stipulates that 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. I find that the Tenant did not take reasonable steps to minimize her losses as she disposed of her personal property at the request of the Landlord even though she had been told by the Residential Tenancy Branch that it was not necessary.

In the event the Landlord wished to end this tenancy because the rental unit was not being kept in a manner that complied with health and safety standards, the onus would have been on the Landlord to show that the Tenant was not maintaining the unit appropriately. In these circumstances, where the Tenant is seeking compensation for disposing of personal property, the burden of proof reverts to the Tenant.

To be successful in a claim such as this, the Tenant would have to prove that the condition of the rental unit was not unsafe and did not pose a risk to health and safety and that the Landlord was acting maliciously when the Landlord directed the Tenant to remove personal property. As previously stated, I find that the Landlord believed that the amount of property in the rental unit was unsafe and was a potential health hazard and I therefore find that there is insufficient evidence to show that the Landlord was acting maliciously.

I find that the Tenant submitted insufficient evidence to establish that the rental unit was not being kept in a manner that was unsafe when the unit was inspected in March of 2017. On the

basis of the photographs submitted in evidence by the Tenant, I find that some areas of the rental unit appear to be clean and reasonably safe. I find that these photographs have limited evidentiary value, however, as the male Agent for the Landlord does not agree that they represent the condition of the rental unit at the time of the inspection on March 03, 2017 and there is no documentary evidence to corroborate the Tenant's testimony that they were taken on March 03, 2017.

I find that the photograph submitted in evidence by the Landlord is of limited evidentiary value, as it does not clearly depict the condition of the interior of the rental unit.

Conclusion:

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 16, 2017

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Residential Tenancy Branch