



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes ERP, FF, MNDC, OLC, PSF, RP, RR

### Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution, filed September 8, 2017, wherein the Tenant requested the following relief:

- an Order that the Landlord:
  - comply with the *Residential Tenancy Act*, *Residential Tenancy Regulation*, and or residential tenancy agreement;
  - make repairs to the rental unit;
  - make emergency repairs to the rental unit; and,
  - provide services or facilities required by law;
- monetary compensation from the Landlord in the form of a rent reduction, both retroactively and prospectively for the cost of services or facilities not provided; and,
- recovery of the filing fee.

The hearing was conducted by teleconference on December 6, 2017. Both parties called into the hearing 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.

The parties agreed that all evidence that each party provided had been exchanged. No 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.

### Preliminary Matter—Naming of Landlord

The Tenant called into the hearing as did S.L. (also known as J.L.). S.L. advised that she is the Owner, X.Z.'s agent. S.L. is identified on the tenancy agreement as the Landlord. The Tenant confirmed that all her dealings have been with the owner's agent, S.L.

Section 1 of the *Residential Tenancy Act* defines Landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure*, I amend the Tenant's Application for Dispute Resolution to properly name the Landlord as S.L., also known as J.L., who is also the Landlord named on the tenancy agreement.

#### Preliminary Matter—Conduct at the Hearing

The Landlord's spouse, X.Z., also called into the hearing. He was not called as a witness by the Landlord.

The Tenant confirmed that she did not know X.Z. nor did she have any dealings with X.Z. I informed that X.Z., that he was permitted to listen in on the hearing, but was not to participate.

At various times during the hearing, X.Z., interrupted the hearing and attempted to speak on behalf of the Landlord; each time X.Z. was reminded not to interrupt the hearing.

After the Landlord provided her response to the Tenant's claims, I asked her to respond to the specific amounts claimed by the Tenant. At this time X.Z. again attempted to respond for the Landlord. When I cautioned X.Z. that further interruptions would result in his exclusion from the hearing, pursuant to *Residential Tenancy Branch Rules of Procedure* Rule 7.2, he stated that the Landlord had difficulty speaking English and he was there to assist her. (Notably, this was immediately after the Landlord had given the Landlord's response evidence and submissions for more than 10 minutes in English without any difficulty speaking or understanding.) When I asked the Landlord to respond to my question, she spoke to me in a different language. When I put it to her that she was pretending not to understand English she reverted to speaking English without difficulty.

#### Issues to be Decided

1. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, *Residential Tenancy Regulation*, and or residential tenancy agreement and provide services or facilities required by law?
2. Should the Landlord be ordered to make repairs to the rental unit, emergency or otherwise?

3. Is the Tenant entitled to monetary compensation from the Landlord in the form of a rent reduction, both retroactively and prospectively, for the cost of services or facilities not provided?
4. Should the Tenant recover the cost of the filing fee?

#### Background and Evidence

The Tenant testified that this two year fixed term tenancy began April 2017. She confirmed that she pays \$3,800.00 in rent for three bedrooms upstairs and one bedroom in a ground floor suite. She further testified that she was also permitted by the Landlord to rent out the ground floor suite to a third party and communicated to the Landlord that she only agreed to rent the rental home if she was able to rent out the ground floor suite as she relied on that income to make her rent payments.

A letter introduced in evidence by the Tenant from L.X., dated September 16, 2017, confirmed that L.X. was present with the Tenant and the Landlord on the date the Tenant viewed the rental property; L.X. writes that she was present when the Landlord gave the Tenant permission to rent the ground floor suite to third parties. In this letter, L.X., also confirms that the Landlord agreed the Tenant could make interior alterations to the ground floor suite to make it ready for rental.

Also introduced in evidence was a receipt dated May 5, 2016 which confirmed the Tenant paid \$1,230.00 for the construction, dry-walling and painting of a partition wall, and installation of lighting. In the within action the Tenant sought compensation for these amounts.

The Tenant stated that for the first two months of her tenancy "everything was fine." She stated that in early July 2017, the next door neighbour's house was completely removed, including a large portion of the fence which separated the rental home from the neighbour's property. She stated that the neighbours then installed a large metal fence which blocked the access to the ground floor suite. Photos provided in evidence confirm that the fence prevented any access to the ground floor suite. The Tenant stated that she immediately contacted the Landlord and asked her to ensure the fence was removed. Despite her requests the fence was not moved until September 2017.

The Tenant stated that she was not able to rent out the main floor suite as a result of the lack of access to the rental unit until September 2017 when the fence was moved to the "neighbour's side". The Tenant also testified that she was forced to accept \$250.00 less in rent due to the condition of the walkway, lack of appropriate fencing, and access to the door. She said that as a result of the construction, the side walk is uneven and the remaining fence is not secured creating a safety and security issue for anyone walking around the house or trying to access to the ground floor suite.

The Tenant further stated that her subtenants in the ground floor suite have informed her that they are moving out because of the security issues created by the lack of fence and uneven ground by the rental unit door and intend to move out effective January 1, 2017.

The Tenant confirmed that she intended to rent out the first floor suite for \$1,000.00 but was not able to do so initially in July, August and September 2017 as the door was completely blocked by the fence. She then stated that she had to reduce the rent to \$750.00 because of the condition of the entrance to the rental unit and the lack of fence. Despite her concessions on the rent amount, her subtenants are moving out January 1, 2017.

Introduced in evidence was a letter from the Tenant to the Landlord, dated August 9, 2017, wherein the Tenant confirms she seeks a reduction in her rent to \$2,000.00 per month as a result of the condition of the entry to the ground floor suite, lack of access to the back yard and hazard caused by the fence. The Tenant notes in this letter that this is her second formal request.

In the within action, the Tenant seeks a retroactive rent reduction in the amount of \$2,000.00 per month rent for the months July to September 2017. She confirmed this sum includes \$1,000.00 per month for the amount she would have received for rental payments for the ground level suite, as well as \$1,000.00 per month for the loss of security, enjoyment and use of the back yard as well as the hazard caused by the fence.

The Tenant also sought compensation in the amount of \$1,230.00 for the cost of the interior work to the ground level suite.

During the hearing the Tenant confirmed that she also seeks a prospective rent reduction pursuant to section 65(1) of the *Act* in the amount of \$250.00 per month for the months October, November and December to compensate her for the rent reduction she was forced to give her subtenants.

The Tenant also provided email communication between herself and the Landlord. In an email dated August 11, 2017, the Landlord purports to copy communication from the owner in which the owner writes that the issue is between the Tenant and the neighbour, not the Tenant and the owner. Further the owner writes that she should not be liable for any loss of rental income with respect to the ground floor suite as she claims that was not part of the tenancy agreement.

In response to the Tenant's claims, the Landlord testified as follows. She confirmed that she is named on the tenancy agreement as she is Agent for the owner. She stated that since July 26, 2017 she has tried to address the fence issue but has not been able to resolve it as she believes it is an issue created by the city in which the rental unit is located, not created by the Landlord or the owner. She further stated that the problem is with the neighbour, not the Landlord or owner.

The Landlord conceded that the fence has impacted the Tenant's access to the ground floor suite. She also stated that she requires something from the Residential tenancy Branch in order to have this matter resolved.

The Landlord also submitted that she has not been able to have the owner address this issue because the owner believes it is the responsibility of the City or the neighbour, not the owner.

### Analysis

After consideration of the evidence before me and on a balance of probabilities, I find as follows.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

**Section 32** of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

**Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) 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.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

**8** (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

The above mandates a Landlord to make repairs when a request for repairs is to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards.

I accept the Tenant's evidence that the condition of the fence and walkway create a security risk and safety issue for both the Tenant and any other occupants. The photos submitted by the Tenant confirm the unsafe condition of both the fence and walkway. I accept the Tenant's evidence that the Landlord and owner have not made necessary repairs, and I therefore find the Landlord has breached section 32 of the *Act*.

**I therefore Order, pursuant to sections 32, 33 and 62(3) that the Landlord, no later than 30 days from the date of this Order**

- 1. repair and/or replace the fence to ensure it is safe and secure; and,**
- 2. repair the walkway to ensure it is passable and free of any obstructions.**

I accept the Tenant's evidence that she agreed to pay \$3,800.00 for the rental home as she intended to rent out the ground level suite to a third party. I further accept her testimony that she had the consent of the Landlord to enter into such a sub-tenancy, and that the Landlord permitted her to make alterations to the ground floor suite in order to permit occupation. I am persuaded by the Tenant's testimony in this regard, as well as the letter she provided from her friend, L.X.

It is notable that the Landlord did not dispute the Tenant's claim that she only agreed to rent the rental home if she could subsidize her rent payments with income from the ground level suite. I therefore find that the Landlord was aware that the Tenant relied on the rental payments from the ground level suite in order to continue with her tenancy.

The Tenant testified that in early July 2017 the neighbouring home was removed and a large metal fence erected which prevented her access to the ground level suite. The obvious conclusion is that the Tenant did not have the rental unit rented as of that time. Accordingly I am unable to find she suffered any financial loss for the month of July 2017.

I accept the Tenant's testimony that she intended to rent out the ground level suite as of August 2017 and was prevented from doing so due to the presence of the fence. While the evidence confirms that it was not the Landlord or owner who erected the fence, but the neighbouring property owner, I find the Landlord and owner did not take appropriate steps to assist the Tenant in resolving this matter.

Section 28 of the *Act* protects a Tenant's right to quiet enjoyment of the rental unit, which includes exclusive possession. Had the Tenant been prevented from accessing the rental unit entirely, the value of her tenancy would have been significantly decreased. In this case the Tenant suffered a loss of use of the ground level suite, which similarly devalued her tenancy.

Section 65(1)(b) gives me authority to allow a Tenant to reduce their rent payments when they suffer a loss of a service or facility provided by the tenancy agreement. I accept the Tenant's evidence that she suffered a loss of access to the ground level suite, as well as an impact on her access to the back yard.

I find the \$1,000.00 claimed for loss of use of the ground level suite to be reflective of the decrease in value of the tenancy for the months August 2017 and September 2017. I therefore award the Tenant a retroactive rent reduction in the amount of \$1,000.00 per month for August 2017 and September 2017 for a total award of **\$2,000.00**.

The evidence confirms that the Tenant was able to rent the ground level suite for \$750.00 as of October 1, 2017. I accept her evidence that this was \$250.00 less than fair market value due to the condition of the walkway and the fence, which were not addressed by the Landlord and owner. I therefore award her a total of **\$750.00** in compensation representing a retroactive rent reduction of \$250.00 per month for the months October 2017, November 2017 and December 2017.

I accept the Tenant's evidence that the lack of fence created a security issue which has resulted in her sub-tenants vacating the rental unit as of January 2018. Should the Tenant be unable to re-rent the unit for January 2018, she is at liberty to apply for further compensation for any related losses. The Tenant was reminded that she must make her best efforts to minimize any losses as required by section 7 of the *Act*. This includes any claim she may have against her sub-tenants for breaking their fixed term tenancy.

The Tenant also sought compensation in the amount of \$1,000.00 per month due to her loss of security and access to the backyard. The photos confirm that the lack of secure fence has left the rental home accessible from the neighbouring vacant lot and street. While I accept the Tenant's evidence that her tenancy has been negatively impacted, I find she has failed to prove the sum of \$1,000.00 per month. I award her the nominal sum of **\$1,200.00** representing a retroactive rent reduction in the amount of \$200.00 per month for the months July 2017, August 2017, September 2017, October 2017, November 2017 and December 2017.

Should the Landlord not make the repairs to the fence and walkway as Ordered in this my Decision, the Tenant shall be permitted to continue paying \$200.00 less per month until the month following the completion of the repairs.

The Tenant also sought compensation in the amount of \$1,230.00 for the cost of the interior work to the ground level suite. Notably, in the letter from the Tenant's friend, L.X., she writes that the Landlord agreed the Tenant could make these alterations, but they were "on the tenant's own account". On this basis, I find the Tenant has failed to prove she should be compensated this amount.

As the Tenant has been substantially successful, I award her recover of the **\$100.00** filing fee.

#### Conclusion

The Tenants' application for an Order that the Landlord comply with the *Residential Tenancy Act* and tenancy agreement is granted. The Tenant's request for an Order that the Landlord make repairs to the rental unit is similarly granted.

**Pursuant to sections 32, 33 and 62(3) I Order that the Landlord, no later than 30 days from the date of this Order make the following repairs:**

- 1. repair and/or replace the fence to ensure it is safe and secure; and,**
- 2. repair the walkway to ensure it is passable and free of any obstructions.**

The Tenant is entitled to the sum of **\$4,050.00** calculated as follows:

compensation for lack of access to ground level suite August and September 2017	\$2,000.00
reduction in value of tenancy due to condition of fence and walkway from October 2017-December 2017	\$750.00
compensation for reduction in value of tenancy due to lack of security and access to backyard from July 2017-December 2017	\$1,200.00
filing fee	\$100.00
<b>TOTAL</b>	<b>\$4,050.00.</b>

Pursuant to section 65(1) I allow the Tenant to reduce her next two rent payments by \$2,025.00 per month until she is reimbursed the full \$4,050.00; for greater clarity, I Order that she pay \$1,775.00 for January 2018 and \$1,775.00 for February 2018.

Further, should the Landlord not make the repairs as Ordered above, the Tenant may further reduce her monthly rent payments by \$200.00 per month until the repairs are made.

The Tenant's claim for compensation for the cost of alterations to the ground floor suite is dismissed.

In the even the tenancy ends prior to the Tenant being reimbursed the \$4,050.00 awarded above, the Tenant may apply for a Monetary Order for the balance due.

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: December 14, 2017

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Residential Tenancy Branch