



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, OLC, PSF, RP, FF

### Preliminary matter

At the start of the conference call the Tenants confirmed that they have submitted an amendment to their application dated December 14, 2017. The amendment is a result of the tenancy ending by mutual agreement on November 30, 2017. The amendment withdraws the Tenants application for the Landlord to do repairs and to provide service and facilities because the tenancy has ended and the Tenants have increased their monetary claim from \$93.03 to \$1,600.00.

### Introduction

This matter now deals with an amended application by the Tenants for compensation for damage or loss under the Act, regulations and tenancy agreement, for the Landlord to Comply with the Act, regulations and tenancy agreement and to recover the filing fee.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on November 11, 2017 and they served the amended application to the Landlord on December 18, 2017. The Landlord confirmed that he received the application and the amended application. Based on the evidence of the Tenants and the Landlord, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so how much?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?

### Background and Evidence

This tenancy started on May 1, 2016 as a one year fixed term tenancy and then renewed as a fixed term tenancy on July 1, 2017 with an expiry date of April 30, 2018. Rent was \$1,000.00 plus 1/3 of the utilities for the property. The Tenant paid a security deposit of \$500.00 and a pet deposit of \$500.00. Condition inspection reports were complete on move in and move out. The tenancy ended on November 30, 2017 by mutual agreement. The Landlord has returned both the security deposit of \$500.00 and the pet deposit of \$500.00.

The Tenants said their original application is for compensation of \$93.03 for costs they incurred to make repairs to the deck and stairs on the entrance to the rental unit. The male Tenant said they are adjusting this amount to \$88.03 as the Landlord reimbursed them \$5.00 for a key. The male Tenant said they are still claiming the \$88.03 for their costs and they submitted receipts in the amount of \$70.15 as support of this claim. The Tenant said they removed old wire from the steps and deck that was used to give grip and replaced it with grip tape. The Tenant said they had told the Landlord about this issue at the start of the tenancy and had emailed the Landlord in November, 2016 about the problem. The Tenants said the Landlord did not repair it. As a result the Tenants incurred costs for the repairs.

Further the Tenants said the Landlord did not maintain the property and as a result the stairs and deck were rotten in places, slippery and dangerous. The female Tenant said she slipped once and injured her back badly enough that she missed two days of work. The male Tenant said there was chicken wire on the stairs and deck used as a grip agent but it was old and was coming apart. As a result their dog cut its paw on the wire. The male Tenant said he removed the dangerous wire and replaced it with grip tape.

The female Tenant continued to say the Landlord's wife blew leaves and debris from her deck and walk way on to the Tenant's area. The female Tenant said this was not right as it cluttered their area and made the stairs and deck more slippery and dangerous. The female Tenant said this devalued their enjoyment of the tenancy. Further the male Tenant said the railings on the lower stairs and the upper stairs were so rotten they were dangerous and an insurance liability. The male Tenant said they agreed to use the Landlord's upper stairs until the upper stairs to the rental unit were repaired. The Tenant continued to say the lower stairs were the only access to their unit and were dangerous due to the rotten railing and slippery conditions. The male Tenant said the Landlord did not fix the railing he only removed it which left one side of the stairs open. The male Tenant said this was a problem that the Landlord did not fix and it made the entry to their unit dangerous for the Tenants and their guests. The male Tenant said this devalued the enjoyment of their tenancy.

The female Tenant continued to say they also had a rodent problem that the Landlord did not correct. She said they had mice which they tried to trap and there was a dead animal under the bathroom which smelled when the bathroom heater was used. Consequently the Tenants did not use the heater in the bathroom for several months.

The Tenants said the Landlord also took back a storage shed that they had been using throughout the tenancy and that they thought it was part of the tenancy although it was not listed on the tenancy agreement.

The Tenants said that for these reasons they ended the tenancy and they made the amended application for \$1,600.00 on compensation for lost of enjoyment of the rental unit because of the maintenance issues, the debris issues and the rodent problem. The Tenants said they calculated the amount of \$1,600.00 as \$100.00 per month of the tenancy and the tenancy lasted for 16 months.

The Landlord said the Tenants did not get approval from him to remove the chicken wire or to make any repairs including putting grip tape on the stairs and deck. As well the Landlord said the upper stairs were repaired in June, 2017 and the Tenants used the concrete upper stairs which are safe. The Landlord said the lower stairs are not rotten and one of the railings is in good repair. The Landlord continued to say that the British Columbia building code says a stairway only requires one railing so the lower stairs met the building codes. The Landlord said

when the Tenants removed the chicken wire without authorizations they created the slippage problem.

The Landlord said he tried to mediate the issues with the Tenants but the Tenants became accusatory and the relationship deteriorated. With regards to the debris being blown from the Landlord's area to the Tenants' area the Landlord said his wife who is not part of the tenancy did blow debris into the Tenants' area and he corrected the situation with his wife. Further the debris and water that came down from the Landlord's deck was not the Landlord's fault because they were not home when it happened. The Landlord said he found a way to clean his property and not affect the Tenants area.

The Landlord continued to say that the Tenants' complaint about the furnace not working turned out to be when the Tenant changed the filters he hit a switch. The Landlord said he called the furnace repair man the same day the furnace problem happened and the furnace was fixed the same day.

The Landlord said he tried to work with the Tenants but they became more difficult as time went on until they both agreed to end the tenancy.

The Landlord said the shed is not in the tenancy agreement and he did not authorize the Tenants to use it. That is why he gave the Tenants 72 hours to remove their things from the shed.

The Landlord continued to say that he tried to resolve the rodent issue by sealing up the holes with expanding foam and then he finally called a pest company in August, 2017. The pest company came again for a second treatment after the tenancy ended.

The Landlord said in closing that he tried to work with the Tenants but the relationship had digressed to the point that talking was not an option. The Landlord said his actions had no malus or bad intentions, things just did not work out.

The Tenant said in closing they asked the Landlord to repair the stairs before moving and emailed the Landlord in November 2016 about repairing the stairs and other repairs in the unit. The Tenants said the repairs were not done or not done in a timely manner. As a result the Tenants said they believe their tenancy was devalued \$100.00 per month for 16 months and they are requesting \$1,600.00 in compensation.

### Analysis

Section 32 of the Acts says: (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.

Further section 28 of the Act says: 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.**

I have reviewed the evidence submitted and testimony given by the parties at the hearing and it is apparent that there are issues between the Landlord and Tenants. I have reviewed the photographs submitted and I can see the rental unit is in a forested area and is an older structure. All tenancies require the parties to make their best efforts to make tenancies work. Disputes arise when the relationship breaks down, when the Act is not followed and when the tenancy agreement is not adhered to. In this situation the Tenants have made a monetary claim because they believe their tenancy was devalued because the Landlord did not maintain the property adequately and the Landlord infringed on their quiet enjoyment of the property.

I accept the Tenants' testimony that the Landlord was requested to repair the lower stair and railing before the tenancy started and then again by email in November, 2016. The Landlord did not repair the railing he removed it which the Landlord says meets the building code. This may be true but the Landlord was aware the Tenants viewed the lower stair way as a potentially dangerous area due to the slippery nature of wooden stairs in a wet climate and with natural debris falling as well as the debris that the Landlord's wife blew on to the Tenants' area. A Landlord must deal with dangerous or potentially dangerous common areas or areas in a rental unit as soon as he is aware of the situation. The Landlord said the Tenants were unauthorized to remove the wire which was put down for skid protection so they are partially responsible for the slippery conditions on the stairs and deck. The Tenants said the wire was old and cut their dog's paw therefore the wire was removed as it was dangerous as well. I accept the Tenants' account of the situation and I find the chicken wire was potentially dangerous and the stairs and deck were dangerous given the area that the house is in. As well I find removing the rotten railing added to the danger of the stairs even though it may meet the building code.

Consequently I find the Landlord did not maintain the property to safe standard which impacted the Tenants quiet enjoyment of the rental unit.

With regard to the movement of debris I accept the Landlord's testimony that he spoke with his wife and found an alternative method of handling the debris. A landlord is responsible to correct an issue in a reasonable amount of time after the landlord is aware of the issue. I find the Landlord corrected the debris issue in a reasonable amount of time.

Further the Landlord did make efforts to control the rodent issue and the Landlord ultimately brought in a pest company in August, 2017 to deal with the rodent issue therefore I find the Landlord met his responsibilities in this matter.

Policy guideline #16 says: An arbitrator may award compensation in situations where establishing the value of the damage or loss is not 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.

The Tenants' application is requesting compensation on two accounts one for lack of maintenance which put them in potential danger and secondly for a loss of quiet enjoyment of the rental unit. I have found for the Tenants in the first case of lack of maintenance. With regard to the loss of quiet enjoyment I find it is linked more to the maintenance issue than the Landlord unreasonable disturbing or significantly interfering with the Tenants during the tenancy. Consequently I dismiss the Tenants claim that the Landlord unreasonable or significantly interfered with the Tenants during the tenancy.

With regard to the lack of maintenance of the stairs and deck I find the Tenants have established grounds for compensation. The Tenant did have use and access to the rental unit through out the tenancy and the Landlord made provisions for them to use the Landlord's upper stairs while the rental unit upper stairs were being repaired. Therefore I find the Tenants' claim of \$100.00 per month is excessive and I award the Tenants \$50.00 per month for 16 months as compensation for the Landlord not attending to the stair and deck issue in a timely manner. I award the Tenants \$800.00 which includes their claim for \$88.03 for expenses incurred.

Further as the Tenants have been partially successful in this matter I order the Tenants to recover the cost of the filing fee in the amount of \$100.00 from the Landlord.

### Conclusion

I find in favour of the Tenants' monetary claim. Pursuant to sections 67 and 72 of the Act, I grant a Monetary Order for \$900.00 to the Tenants. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: January 26, 2018

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Residential Tenancy Branch