



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VISTA PACIFIC PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC

### Introduction

The tenants apply for a monetary award for the costs related to moving and cleaning as well as damages for the stress and pressure of moving and for loss of quiet enjoyment.

It became apparent at the start of the hearing that there is a written tenancy agreement showing the tenant to be the applicant Ms. W. and the landlord to be a company, V.P.P. and for which the respondents are the building managers. The respondents the F.s are not landlords. The style of cause was amended to add the company. The applicants argue that Mr. E. was also a tenant though not named as such in the tenancy agreement.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord or its agents or representatives have breached the tenancy agreement or the law, resulting in damage or loss to the tenant(s)?

### Background and Evidence

The rental unit is a two bedroom apartment in a twelve floor, 95 suite apartment building.

The tenancy started October 15, 2016 for a fixed term ending October 31, 2017. The rent was \$1295.00, due on the first of each month. The tenancy ended as the result of a mutual agreement to end the tenancy effective August 31, 2017.

The landlord kept \$360.00 of the \$647.00 security deposit with the consent of the tenant for the purpose of cleaning the rental unit. The remainder of the deposit was returned to the tenant(s).

The apartment is a seniors apartment; for people over 55 years old. Smoking is prohibited anywhere on the grounds.

Mr. E. is the 53 year old son of the tenant Ms. W. He has been living in the rental unit from the start with the knowledge of the landlord. He says that someone at the Residential Tenancy Branch has informed him he is a tenant.

Mr. E. says that one time in May 2016 the building managers caught him smoking on the rental unit balcony. He knew he was not allowed to do so. He went to apologize but the building managers were rude and unforgiving. He says that after that the landlords harassed him repeatedly.

He says that also in May the building manager Mr. F. assaulted him in an elevator.

The building managers issued another notice in July about his smoking but he says he had not been smoking on the premises. He says he would light up when he reached the public sidewalk outside the building. He says he would pass by the building managers' window on his way to work and they would give him the finger.

Mr. E. had been given an electronic fob for entry to the building but the landlord turned it off on July 31. After the mutual agreement to end tenancy was signed on August 8 it was turned back on.

He feels that the building managers were always watching him.

Ms. W. testifies that her son could not be a tenant on the tenancy agreement because he is under 55 and did not have a job. It was okay for him to live with her though.

At the end of July when her son's fob was deactivated she decided to move. She found a new place but didn't give any notice to the landlord. The landlord had hired a company to mediate the ongoing friction with the building managers. Mr. J.G. from that

company visited her in early August, discovered she was moving and negotiated the mutual agreement to end tenancy that was signed August 8.

The building managers tell a different story to that of Mr. E. Mr. F. says Mr. E. was smoking on the property continuously. When leaving for work Mr. E. would pause on the apartment property five feet in front of their window and light up a cigarette with the intention of antagonizing them. He also thinks Mr. E. jimmied a back door so that he could get into the building that way.

Mr. F. admits to an altercation with Mr. E. in the elevator one day. However, he says the incident was caused when Mr. E. barred Ms. F. from exiting the elevator. Mr. F. thought he was pushing her and grabbed Mr. E. in an effort to protect Ms. F. Mr. E. stumbled and fell.

Ms. F. testifies that Mr. E. was constantly smoking on the balcony. She found a pile of cigarette butts directly below the balcony. She describes an incident where Mr. E. ran after her down an apartment hallway. She was so scared she banged on apartment doors for help.

She describes the elevator incident as Mr. E. pinning her against the elevator yelling and screaming at her.

She says the landlord only wanted Mr. E. to leave, not Ms. W.

### Analysis

The evidence satisfies me that only Ms. W. was the tenant. Mr. E. was an occupant. The tenancy agreement is usually conclusive in such matters and there is no significant evidence here that would cause me to conclude that it is not conclusive in this case. Looked at another way, if the landlord sued Mr. E. for unpaid rent, he would have a very good defence by simply presenting the tenancy agreement to show he was not a tenant and therefore not legally liable to pay the rent.

The essence of most of the tenant's claim is that because of the treatment of her son by the building managers, she was forced to move out.

I find that the version of events given by both Mr. E. and the building managers to be equally credible. It cannot reasonably be determined who was the instigator of the friction between them. The initial burden of proof, on a balance of probabilities, lies with

the applicant. In this case the tenant/applicant has not satisfied that burden. She has not established that the conduct of the building managers was of such a nature as to reasonably require her to relocate. The landlord is not responsible for the tenant's move or the cost related to it. Similarly, the tenant's claim for stress and pressure to move and for harassment and her claim for loss of quiet enjoyment cannot succeed.

I find that the landlord did deactivate Mr. E.'s access fob for a few days. However, it has not been shown that the tenant or Mr. E. had a legal right to a fob for him and that it was anything but a courtesy to the tenant, which could be withdrawn by the landlord.

Regarding cleaning, it is apparent that the tenant's physical condition would not allow her to clean the premises upon leaving. It was not indicated why Mr. E. could not clean. Nevertheless, the tenant agreed in writing to the landlord's proposed \$360.00 cleaning cost and she cannot now seek it back.

### Conclusion

The tenant's application must be dismissed.

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: March 27, 2018

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Residential Tenancy Branch