



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for the return of the security deposit.

The female Tenant stated that on October 06, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch in October of 2017 were sent to the Landlord, via registered mail, at the service address noted on the Application. The female Tenant cited a tracking number that corroborates this statement. The female Tenant stated that this package was returned to her by Canada Post with a note that the package had been refused by the recipient.

On the basis of the testimony of the female Tenant and in the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing. The hearing proceeded in the absence of the Landlord.

### Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?  
Is the Tenant entitled to recover the cost of cable and internet?  
Is the Tenant entitled to compensation for loss of quiet enjoyment?

### Background and Evidence:

The female Tenant stated that:

- this tenancy began on October 01, 2012;
- at the end of the tenancy the rent was \$800.00 per month;
- a security deposit of \$400.00 was paid on September 26, 2012;
- this tenancy ended on August 31, 2017;
- the Landlord did not schedule a time to complete a condition inspection report at the beginning or the end of the tenancy;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and
- the Tenants provided the Landlord with their forwarding address, in writing, on September 10, 2017.

The Tenant submitted a copy of the letter, dated September 10, 2017, in which the Tenants provided the Landlord with a forwarding address.

The Tenant is seeking to recover their security deposit.

The female Tenant stated that the advertisement for this rental unit indicated that cablevision and internet was included with the monthly rent. She stated that the Landlord verbally agreed to provide internet when they discussed the terms of the tenancy prior to the start of the tenancy. She stated that the written tenancy agreement, which was submitted in evidence, indicates that cable was provided with the tenancy.

The female Tenant stated that they asked the Landlord to provide cablevision and internet several times during the tenancy; that he repeatedly told them that they would be provided; and that they were never provided. She stated that the Tenants requested these services, in writing, approximately 7 times. The Tenant submitted a letter, dated July 31, 2016, in which they ask the Landlord to provide these services.

The female Tenant stated that during this tenancy a friend provided them with a device that allowed them to use the internet, although she does not recall the name of the device. She stated that this same friend would record television shows for them and provide the recordings to them on a CD, which they relied on since they did not have cablevision.

The female Tenant stated that they paid the aforementioned friend \$35.00 per month to provide them with the aforementioned services. The Tenant is seeking to recover \$1,960.00 for the money they paid to this friend. The Tenant submitted several receipts that indicate they paid the aforementioned friend of total of \$1,960.00 for these services.

The Tenant is seeking compensation, in the amount of \$1,500.00, for a loss of quiet enjoyment of the rental unit. In support of the claim the female Tenant stated that:

- the Landlord, who lived in the suite above the Tenants, continuously had the volume of the television excessively loud;
- the Tenants repeatedly asked the Landlord to reduce the volume and the Landlord would not comply;
- the volume was so loud that the Tenants could not have a normal conversation in the living room;
- the Landlord attempted to evict them on six occasions and on each occasion the Landlord was unsuccessful, with the exception of the final attempt which resulted in a settlement agreement in which the parties mutually agreed to end the tenancy;
- the Landlord frequently told them they were not permitted to have visitors;
- when the Tenants did have visitors the Landlord would tell them they were not permitted on the property;
- in the May of 2017 the Landlord told them they were not permitted to use the laundry facilities, which was included in the rent;
- when the Tenants continued to use the laundry facilities the Landlord would attempt to prevent the Tenants from using them by duct taping the washing machine and dryer closed or placing objects in front of the machines;
- when the Tenants removed those items and continued to use the machines the Landlord screwed a flexible metal bar over the machines that prevented them from being opened;
- on July 14, 2017 the Landlord gave the Tenants written notice that they could no longer use the laundry facilities and he reduced the rent accordingly, effective August 01, 2017;
- on August 02, 2017 the Landlord pushed her in an attempt to prevent her from using the washing machine, and in doing so scratched her face with his cell phone; and
- after assaulting her on August 02, 2017 he followed her into the rental unit and did not immediately leave when she asked him to do so.

In support of the claim for loss of quiet enjoyment the male Tenant stated that:

- the tenancy agreement allowed the Tenants to store property in the garage;
- they could not store property in the garage as there was mould in the garage;
- the Landlord would not respond to their requests to address the mould in the garage;

- the deck in the back yard was dangerous because some of the boards were missing;
- when the Landlord was asked to repair the deck has simply placed boards across it, some of which were held in place by rocks;
- the Landlord controlled the thermostat for the rental unit;
- the rental unit was always very cold; and
- the Landlord would rarely turn up the heat when asked to do so by the Tenants.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

On the basis of the undisputed evidence I find that the Landlord verbally agreed to provide the Tenant with internet service as a term of this tenancy. On the basis of the undisputed evidence I find that the Landlord agreed, in writing, to provide the Tenant with cablevision as a term of this tenancy. I therefore find that the Tenant was entitled to receive these services with this tenancy.

On the basis of the undisputed evidence I find that the Landlord did not provide the Tenant with internet or cablevision service at any point during this tenancy, in spite of the Tenant's repeated requests for these services.

Section 27(2) of the *Act* authorizes a landlord to terminate a non-essential service or facility, such as internet/cablevision, providing the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an

amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

As the Landlord did not provide internet or cablevision during this tenancy, I find that the Landlord should have reduced the rent to reflect the reduced value of the tenancy, pursuant to section 27(2) of the *Act*. On the basis of the evidence that shows the Tenant paid \$35.00 per month to replace these services, I find that the failure to provide these services reduced the value of this tenancy by \$35.00 per month.

I therefore award the Tenant a rent reduction of \$1,960.00, which reflects the reduced value of the tenancy as a result of the Landlord's failure to provide internet/cablevision.

Section 28 of the *Act* stipulates that tenants are entitled to quiet enjoyment of their rental unit, including, but not limited to the rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession, subject to the landlord's right of entry under the Legislation; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6 reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

In the absence of evidence to the contrary I find that the behaviour of the Landlord, as described by the Tenants, has breached the Tenants' right to the quiet enjoyment of the rental unit. When the Landlord's behaviour is considered in its entirety, I find that the Landlord significantly interfered with the Tenants' enjoyment of the rental unit and that the Tenant is entitled to the amount of compensation claimed, which is \$1,500.00.

Conclusion:

The Tenant has established a monetary claim of \$4,260.00, which includes double the security deposit of \$400.00, a rent reduction of \$1,960.00, and \$1,500.00 compensation for loss of quiet enjoyment, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: May 04, 2018

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Residential Tenancy Branch