



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, ERP, MNDC, MT, PSF, RR

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed March 8, 2018, wherein the Tenant sought the following relief:

- an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use issued on March 6, 2018 (the "Notice");
- an Order for more time to make the application to dispute the Notice;
- an Order that the Landlord:
  - make emergency repairs to the rental unit;
  - provide services or facilities as required by law;
- an Order allowing the Tenant to reduce rent by the cost of repairs, services or facilities.

The hearing was conducted by teleconference at 9:00 a.m. on March 24, 2018. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 9:36 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, service of the Tenant's hearing package was considered. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on March 9, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Landlord was duly served as of March 14, 2018.

I also note that the Tenant advised the Landlord had been criminally charged with assaulting her. Although it is likely he has been released on an undertaking not to have contact with the Tenant that would not preclude him from having an agent call into the hearing. As I have found he was served in accordance with the *Act*, I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's 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

The Tenant testified that although she applied to dispute the Notice, she has moved out as the situation between her and the Landlord has become violent and intolerable.

She stated that the Landlord cut the power off to the rental unit (which is a travel trailer) on May 14, 2018. When she tried to utilize the reserve battery, he then broke into the rental unit on May 16, 2018 and removed the battery. At this time she decided to move.

On May 19, 2018, while she and a friend were in the process of moving from the rental unit, she was assaulted by the Landlord. She stated that the Landlord came into the rental unit and choked her and although he is much larger than her, she was able to fight him off. Her friend heard her screams and called 911. When the police arrived the Landlord was arrested and charged with assault. She stated that he was subsequently released and in informed that his first appearance is on July 10, 2018.

As the Tenant moved from the rental unit, relief related to the continuation of the tenancy is no longer required. Only matters relating to the Tenant's monetary claim remain relevant.

#### Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

### Background and Evidence

The Tenant stated that the tenancy began September 1, 2017. She rents a 34 foot travel trailer from the Landlord, who lives next to her in a mobile home. She pays \$500.00 per month in rent.

The Tenant stated that a term of her tenancy is that she pays for the internet and cable, which is in her name, and to which the Landlord is to contribute \$50.00 per month. She stated that to her knowledge he is not able to have the internet and cable in his name because he apparently owes them money. The Tenant claims \$350.00 in compensation as she testified that the Landlord owes her for 7 months. In support of the amount claimed she provided copies of her internet and cable invoices as well as a letter to the Landlord wherein she confirms he has not paid his share.

The Tenant further stated that the electrical utility is in the Landlord's name and as a term of her tenancy she agreed that she was to contribute \$100.00 per month to this cost. She stated that despite this agreement, the Landlord has bullied her into paying what he claims to be "half" the bill, even though the amount exceeds \$100.00. She also stated that he has failed to provide her with copies of the bills to confirm the amounts owing. She stated that she has asked the Landlord to provide her with copies of the bills and he refuses and becomes verbally abusive. She further stated that she estimates her overpayment to be \$400.00 and therefore asks for compensation for this amount.

The Tenant also requested compensation in the amount of \$500.00 representing return of one month's rent as she believes the Landlord has breached her right to quiet enjoyment due to his bullying and aggressive behaviour and his failure to address required repairs. She stated that he has ignored her requests for repairs and maintenance such as addressing issues with the sewage on the rental property, a malfunctioning electrical plug and a rotting board under the toilet. A letter from the local health authority confirms that the Landlord was warned that continued failure to address the sewage issue would result in fines. Documentary evidence also confirms the Tenant has requested the Landlord take care of the repairs as early as March 2018.

The Tenant also testified that she did not receive her free months' rent pursuant to the Notice and as such she asks for \$500.00 pursuant to section 51 of the *Act*.

Finally, the Tenant asks for return of her rent paid for the days in May in which she was not in occupation of the rental unit due to the Landlord disconnecting her electricity on May 14, 2018. She stated that she came home from picking her children up from school and they did not have power. She called a neighbour to see if the problem was more extensive and discovered that it was the Landlord who had disconnected her power. The Tenant attached the battery to the rental unit, which, as noted previously, was then removed by the Landlord. The Tenant also stated that the Landlord also removed her propane tank which cost her \$20.00 to fill. The

Tenant seeks return of the rent paid for the balance of May as she was not able to live in the rental unit totalling \$290.34.

### Analysis

After consideration of the undisputed evidence before me, and on a balance of probabilities, I find the Tenant is entitled to the amounts claimed.

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 her 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.

I accept the Tenant's evidence that a term of the tenancy was that the Landlord was to pay \$50.00 per month towards the internet and cable bill. I further accept her evidence that the Landlord failed to pay \$50.00 per month for seven months and I therefore award her the **\$350.00** claimed. I also note that it is unconscionable for a Landlord to expect a Tenant to put a utility in their name and seek payment from others (including the Landlord).

I also accept the Tenant's evidence that the Landlord has failed to provide her with copies of the electrical utility, and that he has bullied her into paying more than the agreed upon \$100.00 per month. As such I grant her recovery of the **\$400.00** overpayment.

In this case, the Tenant alleged that her right to quiet enjoyment was negatively affected as a result of the Landlord's behavior. She seeks the equivalent to one month's rent as compensation.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

### **Protection of tenant's right to quiet enjoyment**

**28** 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.

*Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment* provides in part as follows:

“ ...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

... ”

After careful consideration of the Tenant's undisputed testimony and evidence, I find the Landlord has breached section 28. I find that the Landlord has unreasonably disturbed and bullied the Tenant, restricted services and facilities required by law, and failed to address required repairs to the rental unit and rental property. I accept the Tenant's evidence that he cut off her power, breached her right to exclusive possession of the rental unit by entering the rental unit without her knowledge and consent and assaulted her. I find she is entitled to the **\$500.00** claimed representing return of one month's rent.

I also find the Tenant is entitled to return of the rent paid for the days in May in which she was unable to reside in the rental unit and I award her the **\$290.34** claimed.

Section 51 of the *Act* provides that a Tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use is entitled to receive the equivalent to one month's rent. I accept the Tenant's evidence that she has not received this payment and I therefore award her the **\$500.00** claimed.

The Landlord is cautioned that such egregious behaviour as reported by the Tenant in the hearing before me may result in the imposition of administrative penalties pursuant to Part 5.1 of the *Residential Tenancy Act*.

### Conclusion

The Tenant is awarded compensation in the amount of **\$2,040.34** for the following:

|   |          |
|---|----------|
| Compensation for the Landlord's share of the internet and cable utility         | \$350.00 |
| Compensation for overpayment of the electrical utility                          | \$400.00 |
| Compensation for the Landlord's breach of the Tenant's right to quiet enjoyment | \$500.00 |

|   |                   |
|---|-------------------|
| Compensation pursuant to section 51 of the <i>Act</i> | \$500.00          |
| Return of rent paid for May 14-13, 2018               | \$290.34          |
| <b>TOTAL AWARDED</b>                                  | <b>\$2,040.34</b> |

The Tenant is granted a Monetary Order in the amount of **\$2,040.34**. And should he not pay as ordered, this Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division)

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 25, 2018

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Residential Tenancy Branch