



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: MNDC, DRI

### **Introduction**

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order disputing an additional rent increase
- b. A monetary order in the sum of \$755
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on April 12, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order disputing an additional rent increase?
- c. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement.

### **Background and Evidence:**

On April 12, 2016 the landlord and the applicant entered into an employment contract which was signed by both parties. The employment contract makes reference to the compensation to be paid and also states that all reasonable expenses shall be

reimbursed. An Addendum was attached that states the tenant was entitled to rent a 1 bedroom unit \$500.00 per month.

At some stage the applicant was moved to a 2 bedroom unit and began paying \$800 per month. The parties agree the market value of that unit is \$1545.

A T4 given by the landlord indicated there was a taxable benefit of \$745 per month. However, that was subsequently changed to show no taxable benefit as the applicant used the second bedroom as an office.

The landlord produced a tenancy agreement signed in August 2016 which shows the rent for the 2 bedroom unit was \$1545. The applicant signed that agreement as tenant and as landlord. This was the only agreement presented by the applicant to the landlord. The applicant testified she was asked to sign this document in order the landlord could use it to obtain financing.

The applicant produced a form of tenancy agreement which she signed as tenant and landlord dated November 1, 2016 which shows the rent to be \$800. The landlord testified the applicant failed to provide them with a copy of this agreement.

At all material times the applicant paid rent of \$800.

On March 16, 2018 the applicant's employment was terminated. The landlord alleges cause. The applicant disputes this. The landlord also alleges the applicant moved out and sub-letted the rental unit. The applicant disputes this. She testified she and her husband are in the process of separating and divorcing and her husband only moved out. She subsequently allowed a couple of friends to move in with her.

The Applicant continued to live in the rental unit. She has given the landlord written notice at the end of May that indicated she was terminating the tenancy as of June 30, 2018.

The landlord withdrew the sum of \$1545 from the applicant's account for the months of April 2018 and May 2018. The applicant submits the rent for the unit is \$800 per month and the landlord withdrew \$745 per month more than the agreed rent which amounted to an overpayment of \$1490. The tenant instructed her bank not to allow the landlord to withdraw from her account. She gave the landlord \$800 for rent for June.

The tenant alleged the landlord harassed her and she claim an additional \$1000 in her monetary order work sheet.

The landlord has not given the Tenant a Notice to End Tenancy under section 48(1) of the Act (Landlord's notice: end of employment with the landlord).

### Analysis

After carefully considering all of the evidence I determined that the landlord was entitled to rent of \$1545 per month for the following reasons:

- The rental agreement prepared by the Tenant that indicates the rent is \$800 is of little assistance. She signed the agreement as tenant and landlord. She failed to provide the landlord a copy of that agreement and the landlord was unaware of its existence until after the tenant filed this application. It does not accurately set out the relationship between the parties.
- I determined the market value of the rental unit is \$1545 per month. This is set out in the original tenancy agreement between the parties. The tenant acknowledged this is a fair assessment of the market value of the unit.
- The tenant was entitled to receive a benefit in the form of a reduced rent to the sum of \$800 as part of her job. This is evidenced by the fact that the tenant paid this sum and the landlord accepted this amount throughout the tenancy.
- I do not accept the submission of the landlord that the rent reverted to \$1545 per month after she was terminated. The right to receive this benefit is determined by an analysis of the employment contract and the Employment Standards Act.
- Employment law provides that if an employer terminates an employee for cause the employer is not required to give notice and the employee is not entitled to receive a salary and benefits after that period.
- However, it further provides that if an employer terminates an employee without just cause the employee is entitled to notice as provided in the employment contract or reasonable notice at common law. During this notice period the employee is entitled to receive his/her salary and all benefits they received during the employment.
- In this case the employment contract provides "The Employer may terminate the employment of the Employee at any time without the retirement to show sufficient cause pursuant to (b) above, provided the employer complies with all regulations in place by the Employment Standards Act of BC or other such legislation as may be in effect at the time of termination."

- Section 63(1) and (2) of the Employment Standard Act provides that an employee of two years is entitled to receive 2 weeks notice. Those sections provide as follows:

Liability resulting from length of service

63 (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.

(2) The employer's liability for compensation for length of service increases as follows:

(a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;

(b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.

(3) The liability is deemed to be discharged if the employee

(a) is given written notice of termination as follows:

(i) one week's notice after 3 consecutive months of employment;

(ii) 2 weeks' notice after 12 consecutive months of employment;

(iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;

(b) is given a combination of written notice under subsection (3) (a) and money equivalent to the amount the employer is liable to pay,  
or

(c) terminates the employment, retires from employment, or is dismissed for just cause.

The tenant was employed by the landlord for just less than 2 years. Thus, even if the dismissal was a dismissal without just cause the tenant would be entitled to the reduced rent of 2 weeks notice only. Thus the employee was entitled to benefits to March 30, 2018. She would not be entitled to the reduced rent after that time.

As a result I dismissed the tenant's application for reimbursement of the rent the landlord withdrew from the Tenant's account. I determined the agreed rent when the tenant moved into the rental unit was \$1545. She was given a benefit of a reduction of rent because of her employment but that reduction was only available to her for the period she worked and any subsequent notice period required by law. There was no increase of rent and as a result I dismissed the application disputing a rent increase. Further, I determined the rent commencing April 1, 2018 was \$1545 per month even if there was no just cause as the Notice period provided in the employment contract and the Employment Standards Act ended before the start of April. I dismissed the claim for reimbursement of rent paid for April and May 2018. I dismissed the Tenant's claim in the sum of \$1000 for harassment as the Tenant failed to present sufficient evidence to prove this claim.

Conclusion:

In conclusion I dismissed the Tenant's claim without leave to re-apply.

**This decision is final and binding on the parties.**

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: June 19, 2018

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Residential Tenancy Branch