



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDCT, FFT

### Introduction

This hearing was scheduled to deal with the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on March 22, 2018 the Dispute Resolution Package and 21 pages of evidence the Tenant submitted to the Residential Tenancy Branch on March 21, 2018 were sent to the Landlord, via registered mail. The Landlords acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On September 11, 2018 the Landlords submitted 43 pages of evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was served to the Tenant, via registered mail, on September 07, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On July 29, 2018 the Tenant submitted 1 page of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlords. As the evidence was not served to the Landlords, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the documents accepted as evidence has been reviewed, but they are only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Is the Tenant entitled to compensation for being required to vacate the rental unit pursuant to section 49 of the *Residential Tenancy Act (Act)*?

Is the Tenant entitled to compensation for deficiencies with the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on November 01, 2012;
- at the end of the tenancy the Tenant was paying monthly rent of \$700.00;
- on December 12, 2017 the Tenant was served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*;
- the Two Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by March 31, 2018;
- on December 18, 2017 the Tenant gave the Landlords written notice of her intent to end the tenancy on December 31, 2017;
- the Tenant vacated the rental unit on December 30, 2017; and
- the Landlords did not provide the Tenant with the equivalent of one month's rent in compensation for being served with Notice to End Tenancy pursuant to section 49 of the *Act*.

The Tenant is seeking compensation because she was served with a Notice to End Tenancy pursuant to section 49 of the *Act*.

The Tenant is also seeking compensation for deficiencies with the rental unit.

The Tenant is seeking compensation, in part, because garbage cans were blocking the sidewalk leading to the rental unit. The Tenant stated that she first asked the Landlord to move the garbage cans in January of 2015; that she repeated that request several other times; and that they were not moved until December 05, 2017. The Tenant submitted a photograph of the garbage cans which the Tenant contends is blocking the sidewalk.

The male Landlord stated that the Tenant did not express a concern about the garbage cans until December 05, 2017 and that the garbage cans were moved on December 05, 2017.

The Tenant is seeking compensation, in part, because two exterior motion lights were not working properly. She stated that sometimes the light would stay on for too long and sometimes they did not work because the Landlords removed the light bulbs.

The Tenant stated that she first advised the Landlords of a problem with the exterior lights approximately two years prior to the end of the tenancy and that the Landlords removed some of the light bulbs one or two years prior to the end of the tenancy. She stated that one of the lights was repaired on December 10, 2017.

The male Landlord stated that:

- the Tenant did not report that the exterior lights were malfunctioning until November 22, 2017;
- he offered to provide the Tenant with a flashlight until he was able to repair the lights;
- on November 24, 2017 he offered to leave the lights on all night until the sensor could be fixed;
- the Tenant did not respond to that offer so he left the exterior lights on all night;
- he stated that one of the lights was functioning properly and the second light was staying on too long;
- the only time any of the lightbulbs were left unscrewed was on November 22, 2017 when he was attempting to repair the light;
- and the malfunctioning light was repaired on December 10, 2017.

The Tenant submitted photographs of exterior lights without lightbulbs. The Tenant stated that the photographs were taken approximately six months prior to the end of the tenancy. The male Landlord stated that the photographs were likely taken while he was attempting to repair the lights.

The Tenant is seeking compensation, in part, because there were strips on the stairs to prevent slipping; that the Landlord removed those strips approximately six months prior to the end of the tenancy; and that the strips were not replaced until December 05, 2017. The male Landlord stated that the strips were removed in November of 2017 and that they were replaced on December 05, 2017.

The Tenant is seeking compensation, in part, because the gate leading to her rental unit dragged on the ground and the latch did not work properly, which made it difficult to open. The Tenant stated that she first advised the Landlords of a problem with the gate approximately one year prior to the end of the tenancy; that the Landlords attempted to repair the gate but the repair was unsuccessful; and that her guest jumped the gate in 2014 but did not damage it when he did so.

The male Landlord stated that the gate was damaged in December of 2014 when the Tenant's guest jumped over the gate; he repaired the gate on December 23, 2018; the gate subsequently shifted again; and a contractor repaired the gate on March 16, 2017.

The Tenant submitted a photograph of the gate.

The Tenant is seeking compensation, in part, because the rental unit was not painted at the start of the tenancy. She stated that the Landlords did not promise to paint the rental unit at the start of the tenancy.

The Tenant is seeking compensation, in part, because there were rats on the residential property that entered the rental unit when she left her door open.

### Analysis

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. I find that the Tenant received a notice to end a tenancy under section 49 of the *Act* and that she is, therefore, entitled to compensation in the amount of \$700.00, which is the equivalent of one month's rent.

I find that the Tenant is entitled to compensation under section 51, regardless of the fact that she vacated the rental unit early, as authorized by section 50(3) of the *Act*.

Section 32(1) of the *Act* stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the photographs submitted in evidence I accept that the garbage cans that were stored on the sidewalk leading to the rental unit restricted access/egress to the rental unit. In the absence of evidence that the restricted access/egress contravened health, safety and housing standards required by law or that it made the rental unit unsuitable for occupation by a tenant, I cannot conclude that the Landlords breached section 32(1) of the *Act* by storing the garbage cans in that location. As the Tenant has not established that the Landlords breached section 32(1) of the *Act* by storing garbage cans on the sidewalk, I find that the Tenant is not entitled to compensation in regards to the garbage cans.

In the case of verbal testimony when one party submits one version of events and the other party submits a contradictory version of events, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of documentary evidence to support one version of events and in the absence of evidence that places doubt on the credibility of one of the parties, the party bearing the burden of proof would typically fail to meet that burden.

I find that the Tenant has submitted insufficient evidence to establish that there was a lengthy

delay between the time a problem with exterior lights was reported and the exterior lights were repaired. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the problem was first reported approximately two years prior to the end of the tenancy and that the Landlords removed some of the light bulbs one or two years prior to the end of the tenancy or that refutes the male Landlord's testimony that the problem was not reported until November 22, 2017 and that lightbulbs were not removed until November 22, 2017.

In adjudicating this matter I was further influenced by the absence of evidence that corroborates the Tenant's testimony that only one of the lights was repaired on December 10, 2017 or that refutes the male Landlord's testimony that both lights were working properly on that date.

I find that the photographs of exterior lights are of limited evidentiary value, as there is no documentary evidence to corroborate the Tenant's testimony that the photographs were taken approximately six months prior to the end of the tenancy or to refute the male Landlord's testimony that they were likely taken while he was attempting to repair the lights.

As the Tenant has failed to establish that the Landlords did not repair the exterior lights in a timely manner, I find that the Tenant is not entitled to compensation in regards to the lights.

In the absence of evidence that the failure to provide slips strips on stairs contravened health, safety and housing standards required by law or that it made the rental unit unsuitable for occupation by a tenant, I cannot conclude that the Landlords breached section 32(1) of the *Act* when they removed the strips from the stairs. As the Tenant has not established that the Landlords breached section 32(1) of the *Act* by failing to provide slip strips, I find that the Tenant is not entitled to compensation in regards to the strips.

On the basis of the undisputed evidence I find that the gate leading to the rental unit shifted, which made it difficult to open. In the absence of evidence that the damaged gate contravened health, safety and housing standards required by law or that it made the rental unit unsuitable for occupation by a tenant, I cannot conclude that the Landlords breached section 32(1) of the *Act* by failing to repair the gate in a timelier manner. As the Tenant has not established that the Landlords breached section 32(1) of the *Act* by failing to repair the gate in a timelier manner, I find that the Tenant is not entitled to compensation in regards to the gate.

As the Landlords did not promise to paint the rental unit at the start of the tenancy and there is no evidence to show that failing to paint this rental unit contravened health, safety and housing standards required by law or that it made the rental unit unsuitable for occupation by a tenant, I cannot conclude that the Landlords breached section 32(1) of the *Act* when they did not paint the unit. As the Tenant has not established that the Landlords breached section 32(1) of the *Act* by failing to paint the unit, I find that the Tenant is not entitled to compensation in regards to painting.

Rats are a common problem in this province and there is little a landlord can do to prevent them from entering a rental unit if a tenant leaves their door open. As there is no evidence that the rats were on the residential property because the Landlords contravened health, safety and housing standards required by law, I cannot conclude that the Landlords breached section 32(1) of the *Act* when they did not ensure there were no rats on the exterior of the rental unit. As the Tenant has not established that the Landlords breached section 32(1) of the *Act* by preventing rats from coming onto the residential property, I find that the Tenant is not entitled to compensation in regards to rats.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, 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.

I find that all of the aforementioned deficiencies which have been proven by the Tenant, even when they are considered collectively, are relatively minor inconveniences and/or deficiencies. I therefore cannot conclude that the Tenant is entitled to compensation on the basis of a breach of her right to quiet enjoyment of the rental unit.

I find that the Tenant's application has merit and that she is entitled to recover the cost of filing this Application for Dispute Resolution from the Landlords.

### Conclusion

The Tenant has established a monetary claim of \$800.00, which is comprised of \$700.00 as compensation for being required to vacate the rental unit and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$800.00. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of the 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: October 21, 2018

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Residential Tenancy Branch