



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, MNDCT, OLC

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated September 30, 2018 and setting the end of tenancy for October 30, 2018
- b. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- c. An order for a monetary order in the sum of \$10,000

The Landlord failed to appear at the scheduled start of the hearing which was 11:00 a.m. on November 19, 2018. The Tenant applicant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

I find that the Notice to End Tenancy was personally served on the Tenant on September 30, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on October 10, 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 an order cancelling the one month Notice to End Tenancy dated September 30, 2018?
- b. Whether the tenant is entitled to a monetary order and if so how much?

- c. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement?

Background and Evidence:

The tenancy began in April 2017. The tenancy agreement is oral and provides that the tenant would pay rent of \$800 per month payable in advance on the first day of each month.

The parties were involved in a previous arbitration that was heard on December 12, 2017. At that hearing the landlord was represented by Counsel. Counsel acknowledged the documents the landlord was relying on had been falsified by the landlord. The arbitrator in that hearing granted the request of the landlord to withdraw her application, granted the tenant a monetary order in the sum of \$800 which was to be applied against the rent for January 2017 and warned the landlord as follows: "The Tenant may apply for significant compensation as the landlord may have contravened my or by entering the Tenant's rental unit without proper notice or it may be view as the Landlord is harassing the Tenant which is a loss of quiet enjoyment of the rental unit."

Application to Cancel the one month Notice to End Tenancy:

The Notice to End Tenancy dated September 30, 2018 does not identify grounds for ending the tenancy. There are some handwritten statements by the landlord that state the following:

- Landlord does not have \$\$ to pay for heat and hydro\* Propane \$500
- Landlord has to shut down house
- Forced to no choice
- No \$\$\$ on disability
- Moving into my little travel trailer.

The landlord has the burden of proof to present sufficient evidence to establish cause on a balance of probabilities. The landlord failed to attend the hearing and failed to upload evidence prior to the hearing. Further, the landlord failed to identify grounds for ending the tenancy. After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. **As a result I ordered that the Notice to End Tenancy dated September 30, 2018 be cancelled.** The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Application of the Tenant that the Landlord comply with the Act, Regulations and/or tenancy agreement:

The tenant testified that heat is included with the rent. The rental unit has electric baseboard heaters installed and she has used that to keep her warm through the Fall and winter of 2017. The landlord has turned off the electric heat and put a lock on the breaker box which prevents the tenant from using the electric heat.

**I order that the landlord comply with the tenancy agreement by turning on the breakers so that the baseboard heaters in the rental unit are operational. .**

Application of the Tenant for a monetary order:

The tenant seeks a monetary order in the sum of \$10,000 based on the following:

- The landlord has failed to adequately heat the rental unit. She has medical issues and the lack of heat causes her significant pain.
- The problem with the heat has become a significant problem starting in September 2018. Almost every morning she suffers because of the lack of heat.
- The landlord has continuously harassed her. She gives multiple excuse for why she wants the Tenant out including misinforming the tenant she intends to sell the house, she intends to move into the rental unit herself and she intends to have a family member move in.
- The landlord has demanded payment for propane which is not part of her responsibility.
- The landlord continually leaves notes complaining about her actions.
- The landlord on many occasions turns up the music and plays the same song over and over again while she leaves. This occurred about 12 times in the month of October.

Section 28 of the Residential Tenancy Act provides 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.

After carefully considering all of the evidence I determined the Tenant is entitled to compensation for breach of the covenant of quiet enjoyment. The rent is \$800 per month. The landlord has failed to properly heat the rental unit for the months of September, October and November 2018. I determined the tenant is entitled to compensation in the sum of \$200 per month for the 3 months for a total of \$600.

In addition I determined that the landlord is intentionally harassing the Tenant in an attempt to force her to leave. However the Tenant's evidence on many of these events lacked specificity and to when they happened, how long it lasted and how it affected her. I determined the tenant is entitled to compensation for landlord's efforts to unreasonably disturb the Tenant in the sum of \$600.

**In summary I ordered that the landlord pay to the Tenant the sum of \$1200 such sum may be applied to future rent.**

The landlord must be served with this Order as soon as possible. Should the Tenant chose not to apply this order to future rent and should landlord fail to comply with this Order, the Tenant landlord may register the Order with the Small Claims Court of British Columbia for enforcement.

**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: November 28, 2018

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Residential Tenancy Branch