



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MNDCT, FFT, PSF

### **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, for an Order requiring the landlord to provide services, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Tenant stated that she does not recall applying for an Order requiring the landlord to provide services. As the Tenant does not recall applying for this Order and the rental unit has been vacated, the application for an Order requiring the landlord to provide services is not being considered.

On April 30, 2019 the Tenant filed an Amendment to an Application for Dispute Resolution in which she increased the amount of her monetary claim.

The Tenant stated that sometime during the first week of May of 2019 the Dispute Resolution package, the Amendment to the Application for Dispute Resolution, and evidence the Tenant submitted to the Residential Tenancy Branch in April of 2019 were personally served to the female Landlord. The female Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The female Landlord stated that she is representing the male Landlord at this hearing and the hearing proceeded in the absence of the male Landlord.

On May 23, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was personally served to the Tenant on

May 27, 2019. The Tenant acknowledged receiving this evidence and it was 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. All of the evidence accepted as evidence for these proceedings has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

### Preliminary Matter

In the Monetary Order Worksheet it appears that the Tenant is seeking to recover her pet damage and security deposit. At the hearing the Tenant stated that she has not yet provided the Landlords with a forwarding address, although she has provided them with an email address.

Section 38(1) of the *Residential Tenancy Act (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. A forwarding address, for the purposes of section 38(1) of the *Act*, means a mailing address to which a landlord can serve documents. It does not include an email address, as the *Act* does not allow landlords to serve documents by email.

As the Tenant has not yet provided the Landlords with a forwarding address, in writing, I find that the Tenant's application to recover her security deposit is premature. I therefore decline to consider the Tenant's application to retain the security deposit or pet damage deposit.

The Tenant retains the right to file another Application for Dispute Resolution seeking the recovery of her security deposit once she has provided the Landlords with a forwarding address, in writing. Once the Landlords receive this forwarding address they are obligated to comply with section 38(1) of the *Act*.

### Issue(s) to be Decided:

Is the Tenant entitled to compensation for issues related to this tenancy?

Background and Evidence:

The female Landlord and the Tenant agree that this tenancy began in March of 2019; that the Tenant agreed to pay monthly rent of \$1,100.00 by the first day of each month; and that the rental unit was vacated on May 29, 2019.

The female Landlord stated that

- the keys were given to the Tenant by March 01, 2019;
- on March 01, 2019 there were still minor work items in the unit that needed to be completed inside the rental unit;
- the Tenant informed the Landlords that she was unable to move into the unit until March 15, 2019 because of snow and the Tenant's inability to make moving arrangements;
- as the Tenant was not moving into the unit until March 15, 2019 the Landlords used that time to complete renovations in the unit; and
- the Tenant moved into the rental unit on March 15, 2019.

The Tenant stated that

- the keys were given to her on March 15, 2019;
- on March 01, 2019 she was unable to move into the unit because it was still being renovated; and
- she moved into the rental unit on March 21, 2019.

The Tenant is seeking a rent refund for April and May of 2019, as well as moving costs of \$1,000.00. In support of this claim the Tenant submits that:

- she moved into the rental unit under false pretenses;
- the Landlords represented themselves as Christians, who behaved politely and did not swear;
- soon after she moved in the male Landlord was verbally abusive to her on a regular basis;
- she and the male Landlord argued about a variety of issues, including removing garbage, moving her paving stones, parking, and smoking related issues;
- the male Landlord called her a liar and frequently used profanity; and
- she wanted to move because she concluded that the Landlords were not Christians and she was not being treated respectfully.

In response to the claim for a rent refund and moving costs the female Landlord stated that:

- the Landlords did not discuss their religious beliefs with the Tenant;
- the relationship between the parties was highly confrontational;
- the conflict was initiated by the Tenant, who was making unreasonable demands;
- the Tenant frequently yelled and talked over the Landlords;
- the Tenant “bullied” the Landlords;
- the Landlords had to speak “bluntly” to the Tenant as she would not listen to other perspectives; and
- on one occasion the male Landlord used profanity.

The Tenant is claiming compensation of \$1,500.00 because she was unable to use her motorcycle. In support of this claim the Tenant stated that:

- the Landlords’ truck was often parked in the driveway in a manner that prevented her from passing it on her motorcycle;
- when the Landlords’ truck was not blocking the driveway she did not want to leave the property on her motorcycle for fear she would not be able to get it back up the driveway;
- her photographs show that how driveway was blocked by the Landlords’ truck; and
- there was a verbal agreement that the Tenant could park her motorcycle in front of the shed, which is on the lower portion of the property.

In respond to the claim for \$1,500.00 the female Landlord stated that:

- on occasion the driveway is blocked by the Landlords’ truck;
- when the driveway was blocked it was for loading purposes and was always for a very short period of time;
- one of the photographs submitted by the Tenant were taken when the truck was parked in the driveway for a very short period of time;
- the second photograph shows the truck parked in the driveway while debris was being loaded into it and that it was not parked there for very long;
- the third photograph of the driveway does not fairly represent accessibility, as the Tenant could have driven past the truck;
- the other tenant who lives on the residential property can pass the parked truck in his van;
- there was a verbal agreement that the Tenant could park her motorcycle in front of the rental unit; and
- there was never a verbal agreement that the Tenant could park her motorcycle in front of the shed on the lower portion of the property.

The Landlord submitted an email from another tenant on the residential property. In the email the other tenant declares, in part, that:

- there is room for him to drive his van into the driveway;
- there is room for the Tenant to drive her motorcycle up the driveway; and
- in the four years that he has lived on the property there has not been tenant parking in the lower part of the yard.

The Tenant stated that she did not bring the email for the other tenant to the hearing and that she has not read it because she is not interested in it as it is “all lies”. When asked how she knew it was “all lies” if she had not read it she replied that she assumes the other tenant would lie as he has been a long-term renter at this property.

The Landlords submitted photographs of the parking area provided to the Tenant. The female Landlord stated that these photographs establish that there is ample room for the Tenant to park her motorcycle. The Tenant stated that she did not bring the Landlord’s photographs to the hearing so she cannot respond to the Landlords submission that there is ample room to park. She stated that she does not want to park in the area provided to her by the Landlord and it is too close to the road and is, therefore, unsafe. She contends it is 1 inch from the road. The female Landlord stated that this area is 10 feet from the road.

The female Landlord stated that even if the Tenant could not get her motorcycle up and down the driveway, she would have been unable to drive it because it was not insured. The Landlords submitted a photograph of the license of the motorcycle, which has an insurance decal from 2015.

The Tenant stated that her motorcycle was insured in January of 2019 and January of 2018. When asked why the decal on the plate is from 2015 she stated that she had a new license plate. When asked how that would be possible, given the 2015 decal was on the license plate she stated that the decal from 2018 must have fallen off and she forgot to attach the decal from 2019.

The Tenant is seeking compensation for broken paving stones. The Tenant stated that a couple of days after she moved in the male Landlord told her she had to move her paving stones and when she did not immediately do so he began throwing them around the yard.

The female Landlord stated that when the Tenant moved in her paving stones were piled on top of a juniper. She stated that on March 24, 2019 she was asked to move the

paving stones; on March 30, 2019 she began moving the stones and stopped when the Tenant asked her to do so; on April 03, 2019 the male Landlord moved the stones off the juniper; and the stones were not damaged when they were moved.

The Landlords submitted photographs of the paving stones on top of the juniper. The female Landlord contends that the photographs show that the paving stones were broken prior to the male Landlord moving them. The Tenant stated that the paving stones in this photograph are irregular shaped and that they are not broken.

The Tenant submitted a photograph of a pile of paving stones that she alleges were broken by the male Landlord.

The female Landlord and the Tenant agree that the Tenant paid full rent for March of 2019 even though it was agreed that she would not move into the unit until March 15, 2019. The parties also agree that the Landlords promised to provide the Tenant with free cable service for a period of six months because she was not moving into the unit until March 15, 2019. The Tenant is seeking to recover \$550.00 of the rent she paid for March of 2019, as she did not receive six months of free cable.

The female Landlord stated that the Tenant did receive 2.5 months of free cable and that she should not, therefore, be entitled to a full refund of \$550.00. She stated that the Landlords would be willing to refund a pro-rated amount of the rent from March of 2019, which she estimates is \$260.00.

#### Analysis:

There is a general legal principle that places the burden of proving a claim on the person who is claiming compensation for damages. As this is the Tenant's Application for Dispute Resolution, the burden of proof rests with the Tenant.

On the basis of the undisputed evidence I find that there was a significant amount of conflict between the Landlords and the Tenant during this tenancy. I find that the Tenant has submitted insufficient evidence, however, to establish that she is entitled to compensation as a result of this conflict.

While I accept that there was significant conflict between the parties, I find that the Tenant is largely responsible for the conflict. In reaching this conclusion I was influenced by the female Landlord's testimony that the Tenant was highly confrontational as it was strongly corroborated by the Tenant's behaviour during the

hearing. On numerous occasions during the hearing the Tenant had to be reminded that she was not permitted to interrupt when the Arbitrator and the Landlord were speaking.

At times the Tenant was sarcastic and verbally abusive to the Arbitrator. On one occasion the Tenant declared that it was obvious, from the questions being asked, that the Arbitrator was not a Christian. These comments are being recorded not because I was offended by them but, rather, to demonstrate the inappropriate behaviour of the Tenant.

In concluding that the Tenant was largely responsible for the conflict between the parties I was further influenced by the emails from the individuals who moved the Tenant to the rental unit. In these emails the movers declared, in part, that when they were moving the Tenant into the rental unit the Tenant arrived at the property and was "aggressive and rude with the Owner". They further declared that they were talking with the male Landlord when the Tenant arrived and she was in a "foul mood because we wouldn't Move her with all The commotion going on when we got to where She was evicted from".

On the basis of the female Landlord's testimony and the Tenant's behaviour at these proceedings, I find it highly likely that the Tenant was the primary source of conflict during this tenancy. I accept that the male Landlord inappropriately used profanity in the Tenant's presence on at least one occasion and that the Landlords argued with the Tenant. Although the Landlord's behaviour cannot be condoned, I find that this was likely a response due to the inappropriate behaviour of the Tenant. As I have concluded that the Tenant was the primary source of the conflict, I find that she is not entitled to a rent reduction or any other form of compensation as a result of the conflict between the parties.

On the basis of the undisputed evidence I find that the Tenant vacated the rental unit as a result of the conflict between the parties. As I have concluded that the Tenant was the primary source of the conflict, I find that the Landlords are not obligated to pay for any costs associated to her decision to vacate the rental unit. I therefore dismiss the Tenant's application for moving costs.

On the basis of the testimony of the female Landlord I find that on occasion the Landlords' truck blocked the driveway. On the basis of her testimony I find that the truck would only block the driveway for short periods of time when the truck was being loaded. I find that blocking a driveway for short periods of time, particularly when the

blockage is for a legitimate purpose, is a minor inconvenience and that the Tenant is not entitled to compensation for this inconvenience.

I find that the Tenant submitted insufficient evidence to establish that the Landlords' truck was regularly parked in a manner that prevented her from passing it on her motorcycle. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Tenant's submission. Although the Tenant contends that her photographs show that the driveway is blocked by the parked truck, I find that the photographs are not taken from a vantage point that allows me to determine whether or not a motorcycle can pass the vehicle when it is parked in its normal parking space.

In determining that the Tenant has submitted insufficient evidence to establish that the Landlords' truck was regularly parked in a manner that prevented her from passing it on her motorcycle I was further influenced by the female Landlord's testimony that the other tenant can pass the parked truck with his van.

In determining that the Tenant has submitted insufficient evidence to establish that the Landlords' truck was regularly parked in a manner that prevented her from passing it on her motorcycle I was further influenced by the email from the other tenant on the residential property, in which he declared that there is room for him to drive his van into the driveway and that there is room for the Tenant to drive her motorcycle up the driveway.

As the Tenant has failed to establish that the Landlords' truck was regularly parked in a manner that prevented her from passing it on her motorcycle, I dismiss her application for compensation for being unable to use her motorcycle.

Even if I concluded that the Tenant was unable to drive her motorcycle past the parked truck, I would find that she is not entitled to compensation. In reaching this conclusion I was heavily influenced by the photograph of the motorcycle's license plate. This photograph shows that the decal on the license plate is from 2015.

I find that the Tenant has submitted insufficient evidence to establish that her motorcycle was licensed at any point during this tenancy. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as the insurance papers, that corroborates her testimony that it was licensed in January of 2019. I find her testimony in regards to the licensing was inconsistent and lacking in credibility. She initially stated that she obtained a new license plate and when she was asked to explain the logic in that testimony she stated that the decals from 2018 must have fallen off and



that she forgot to affix the decal from 2019. Given that it is extremely rare for these decals to fall off, I find this explanation lacks credibility.

As the Tenant has failed to establish that her motorcycle was insured at any point during this tenancy I cannot find that the Landlords' actions could have had any significant impact on her ability to drive the motorcycle.

I find that the Tenant has submitted insufficient evidence to establish that the Landlords verbally agreed that she could park in front of the shed. In reaching this decision I was influenced by the absence of evidence to corroborate the Tenant's submission. Conversely, the email from the other tenant of the residential property serves to corroborate the female Landlord's testimony that the Landlords did not verbally agree that the Tenant could park in the shed on the lower part of the property. Specifically, the other tenant declared that in the four years that he has lived on the property there has never been tenant parking in the lower part of the yard.

I find that the Tenant has submitted insufficient evidence to establish that the Landlords broke her paving stones. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates her testimony that the male Landlord broke them or that refutes the female Landlord's testimony that the male Landlord did not break them. I find that the photograph submitted in evidence by the Tenant does not corroborate her submission, as it simply shows neatly piled paving stones that are similar to size and shape as the paving stones shown in the Landlords' photographs, which were taken prior to the stones being moved. As the Tenant has failed to establish that the Landlords broke her paving stones, I dismiss her claim for compensation for broken stones.

As the female Landlord declared at the hearing that the Landlords are willing to refund \$260.00 of the rent paid for March of 2019, given that the Tenant did not enjoy the benefits of the free cable service for six months that was promised, I find that the Landlords must comply with this promise. I note, however, that I would have dismissed this claim if the female Landlord had not offered the refund.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant suffers a loss as a result of the landlord not complying with the tenancy agreement or the *Act*. In regards to the claim for a rent refund for March of 2019 I find that the Tenant did not enjoy the benefits of free cable service because she opted to vacate the rental unit prior to receiving that full benefit. I have not concluded that the Landlords breached the *Act* or the tenancy agreement and I cannot, therefore, conclude

that the Tenant did not receive these full benefits because of the actions of the Landlords. As it has not been established that the loss of benefits was the result of the Landlords breaching the *Act* or the tenancy agreement, I would not have granted the rent refund.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$260.00, which is the amount the female Landlord promised to refund for rent paid in March of 2019, 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: June 07, 2019

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Residential Tenancy Branch