



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GURDEV HOLDINGS LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Landlord: MNR, MNDC, MNSD, MND, FF  
Tenant: MNDC, OLC, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, for lost rental income, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by  
personal delivery on July 15, 2019, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by  
personal delivery on July 17, 2019 in accordance with section 89 of the Act.

The Tenant and the Landlord confirmed that they had received the other party's hearing packages as well as amendments and evidence packages.

### Issues to be Decided

#### Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlords and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?
5. Is there lost rental income and if so how much?
6. Is the Landlord entitled to compensation for lost rental income and if so how much?
7. Is the Landlord entitled to retain the Tenant's security deposit?

#### Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?

### Background and Evidence

This tenancy started on April 1, 2014 as a month to month tenancy. Rent was \$800.00 at the start of the tenancy and was payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy. The tenancy ended July 15, 2019 by bailiffs enforcing an Order of Possession issued on June 17, 2019. The Tenant said no condition inspection reports were completed for this tenancy.

During the start of the hearing the Landlord said he had not submitted all his evidence to support the monetary claim. There has been a lot of work at the rental unit and did not have the paid receipts at the time of making the application. The Landlord said his application is supported by estimates and now he has paid receipts, but they are not submitted into evidence. The Landlord said he has the Bailiff receipt, the clean up and repair receipts and he is removing his claim for lost rental income as the Tenant paid the rent. The Landlord continued to say they are also willing to return \$475.00 of rent to the Tenant for July 15, to July 31, 2019 as the Tenant paid the rent but the tenancy ended on July 15, 2019. Consequently, the Landlord said he is withdrawing his application and he will resubmit with a complete and accurate application and evidence package.

The Tenant said they were evicted by Bailiffs that showed no credentials and although the Police were called the Police allowed the eviction to continue. The Tenant said it was not right because he paid the Landlord the July 2019 rent which reinstated the tenancy. The Tenant said the Landlord accepted the rent and issued a rent receipt for \$950.00 for July 2019 rent. Use and Occupancy were not indicated on the rent receipt; therefore the Tenant said the tenancy was reinstated and the Landlord illegally evicted them.

Further the Tenant said the Landlord illegally increased the rent from \$800.00 to \$950.00 in September 2018. The Tenant said the Landlord said they were using too much water. The Tenant continued to say he did not agree to the rent increase but he was scared of being evicted so he paid the increased rent of \$950.00 from September 2018 to July 2019. The

Tenant said he is now requesting to recover the over payment of rent in the amount of 11 months times \$150.00 = \$1,650.00.

The Landlord said the Tenant was operating an unauthorized and illegal business in the rental unit which accounted for the excessive water usage. The Landlord said the Tenant had paid the cost of the water previously by invoice so in September 2018 the Owner and the Tenant agreed to increase the rent to \$950.00 per month. The Landlord said there is no documentation of this agreement and the Owner was not on the conference call. The tenancy agreement indicates water is included in the tenancy and at a rental of \$800.00.

The Tenant continued to say that the other claims he has made in the amount of \$20,000.00, he is withdrawing as most of the items were donated items and he has no evidence to support the claims. The Tenant said he may make another application for his personal belongings which the Landlord removed and did not return to the Tenants. The Tenant said these included furnishings, appliances and personal belongings.

The Landlord said the Bailiffs told him the belongings and items in the house were the Landlord's free and clear and the Landlord could do with them what the Landlord wanted to do. The Landlord continued to say the items left in the rental unit had no value so the rental unit was cleaned and the debris in the house was thrown away.

The Tenant said in closing the Landlord has harassed them and has wrongfully evicted them. The Tenant said they have lost all their belongings and the Landlord has not tried to contact them or return anything. The Tenant stated he did not want the Landlord or his employees harassing them again and if they do he will call the Police.

The Landlord said in closing the Tenants were running an unauthorized and illegal business in the rental unit and the Tenant agreed to the rent increase of \$150.00 for the excessive water that the Tenant was using in the business. The Landlord said there is no overpayment of rent and the Landlord is not responsible to pay the Tenant anything.

### Analysis

Section 42 of the Act says:

42 (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 of the Act says:

43 (1)A landlord may impose a rent increase only up to the amount

(a)calculated in accordance with the regulations,

(b)ordered by the director on an application under subsection (3), or

(c)**agreed to by the tenant in writing.**

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3)In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4)[Repealed 2006-35-66.]

**(5)If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.**

In this situation the Landlord said he had an agreement with the Tenant to increase the rent from \$800.00 to \$950.00, but there is nothing in writing to document this agreement. The Tenant says he did not agree to the rent increase. I find that the Landlord has not comply with the Act for the rent increase and there is no written documentation that the Tenant agreed to the rent increase; therefore I find the Landlord's rent increase of \$150.00 from September 2018 to July 2019 is a non compliant rent increase. I award the Tenant \$1,500.00 for overpayment of rent from September 2018 to June 2019. Further as the Landlord offered \$475.00 of rent to be returned to the Tenant for July 15 to July 31, 2019, I accept the Landlord's offer and award \$475.00 to the Tenants for July 15 to July 31, 2019 as a rent return.

The Tenant will receive a monetary Order for \$1,975.00 for overpayment of rent and rent returned by the Landlord for July 15 to July 31, 2019.

As the Landlord withdrew his application; I order the Landlord to bear the cost of the filing fee of \$100.00 which the Landlord has already paid.

As the Tenant has only been partially successful; I order the Tenant to bear the cost of the filing fee of \$100.00 which the Tenant has already paid.

Conclusion

A Monetary Order in the amount of 1,975.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Landlord's application is withdrawn with leave to reapply.

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, 2019

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Residential Tenancy Branch